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GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

German Prize Law.

WE HOPE to commence next week the publication of a series of articles by Dr. C. H. HUBERICH of the United States Supreme Court Bar on "The Development of German Prize Law." Dr. HUBERICH has made very extensive contributions to the legal literature of the war. His articles in these columns early in the war on the Emergency Legislation of Germany, in collaboration with Mr. RICHARD KING, will be remembered, and with the same assistance he has edited "The Prize Code of the German Empire" (1915). Recently he has written a very complete treatise on the law relating to Trading with the Enemy, particularly with reference to the United States Trading with the Enemy Act. It is one of the incidents of war that, while the belligerent forces are engaged in mutual destruction, their respective Prize Courts apply the principles of law with judicial impartiality. It will probably be found that the work of the German Courts during the present war, like that of our own, has produced results both interesting and instructive.

Sir Walter Phillimore's Peerage.

WE HAVE not attempted to distinguish in the continued lists of honours those which have been conferred upon lawyers. The Government have, no doubt, good reason for making the fountain of honour flow with unusual profuseness; but even the undecorated may console themselves with the reflection that "M.B.E." is not altogether distinctive, and that each can claim to be "a citizen of no mean city." The week, however, has produced one honour which is of special interest; we refer to the peerage conferred on Sir WALTER PHILLIMORE, who retired from the Court of Appeal two years ago, after eighteen years judicial service. And while he had a distinguished career both at the Bar and on the Bench, he has always had wider interests than those of the usual successful lawyer. Both ecclesiastical and international law have benefited by his labours, and the latter has found in him an assiduous helper. In 1905-1908 he was President of the International Law Association. And all this has been associated with much religious and municipal work. We are glad to think that the present dignity will make Sir WALTER'S services available in the House of Lords.

Mr. Hoover's Intended Visit.

We are interested to see, from the number of the National Food Journal just issued (12th inst.), that Mr. Hoover, the United States Food Administrator, is expected to visit this country next month to confer with Lord Rhondda and the Allied Food Controllers and their expert advisers. Mr. Hoover was the leading spirit in the organization of relief for Belgium while it was still possible for that work to be carried on by America. When it was handed to Spain and Holland, Mr. Hoover returned to America, and became Food Administrator there. Considering how largely the Allies in Europe depend on American supplies and co-operation, the visit of Mr. Hoover can hardly fail to have important practical results, apart from the welcome which he will receive in this country.

Women as Candidates for Parliament.

The announcement of Mr. Bonar Law that the Government are inquiring into the legal aspect of claims by women to sit in the House of Commons must have come as rather a surprise to registration lawyers. The law, as we pointed out in a recent article (*ante*, p. 532), seems reasonably clear on the point; there can be little doubt that a woman was not at common law eligible for a seat in the Commons, nor has the recent Representation of the People Act in any way removed this disability. Probably the reply of the Chancellor of the Exchequer may be regarded as a polite and legitimate mode of evading the awkward issue raised. It is hardly likely that the War Cabinet has any intention of proposing a Bill to remove this disability in war time. The subject is far too controversial, and the evidence of a demand on the part of any large body of the newly-enfranchised women is at present quite absent. Of course, any serious desire for seats in Parliament on the part of the new electorate, if it does exist, or if it should come into existence, could hardly be resisted. But that is a problem for the future. We presume, from Mr. Bonar Law's reply, that the Law Officers of the Crown are at present seriously engaged in considering the legal aspect of the difficulty which has already arisen here and there; for in certain constituences a part of the electorate propose to nominate female candidates. Returning officers will have to consider how they will deal with such nominations, and a uniform practice is desirable. Should the Law Officers' opinion be adverse to the legal claim—and one would fancy it must be so—then the opinion could be circulated by the Local Government Board among returning officers, who would probably accept it and act in accordance with any suggestions it may make for their guidance; but of course it would not be technically binding on them.

Damages in Passing-Off Actions.

The plaintiffs in *Spalding* v. *Gamage* appealed, as we anticipated, from the decision of Younger, J. (on which we commented, 61 Solicitors' Journal, p. 770), whereby he reduced the damages from the sum of £7,000, awarded to them by the Official Referee, to £100; and as the defendants had paid £250 into court, they were given the costs of the proceedings before the Official Referee, and also of the proceedings before Younger, J. The Court of Appeal (35 R. P. C. 115) awarded the plaintiffs £250 in place of £100, but they did not disturb the order of Younger, J., as to costs, and they said that each party must pay their own costs of the appeal. It is, of course, open to the plaintiffs to go to the House of Lords; but, were it not for the pertinacity which has been exhibited by both parties in the case, we should hardly think that they would. The history of the litigation is somewhat remarkable. The action was for passing off, and an injunction and damages were sought, the plaintiffs' claim being based on some advertisements of the defendants which extended over a period of six days. Sargant, J., awarded an injunction, and directed an inquiry as to damages. The Court of Appeal reversed this decision. The plaintiffs then went to the House of Lords, who allowed the appeal and restored the judgment of Sargant, J. The inquiry as to damages was then proceeded with before the Official Referee, who awarded the plaintiffs £7,000. The defendants paid £250 into court, and then moved to vary the award before Younger, J., who cut the damages down to £100, but the Court of Appeal, as stated above, increased the amount to £250. The case, therefore, has now been five times before the courts, and once before the Official Referee, and the expenses of the litigation must have been enormous, having regard to length of time the case has occupied on each occasion when it has been before the courts.

The Latest Allied Declaration.

The times are not propitious for comments on "Treaties and Peace Negotiations," and we are delaying any addition to our summary of current events under that head; but in the nature of things there will be a continuation and an ending. Meanwhile, however, there is a good deal happening which deserves a short notice. In particular, the declaration agreed to at Versailles on 3rd June by the Prime Ministers of the three Allied countries, Great Britain, France and Italy, which is as follows:—

> (1) The creation of a united and independent Polish State with free access to the sea constitutes one of the conditions of a solid and just peace and of the rule of right in Europe.
>
> (2) The Allied Governments have noted with pleasure the declaration made by the Secretary of State of the United States Government and desire to associate themselves in an expression of earnest sympathy for the nationalistic aspirations towards freedom of the Czecho-Slovak and Jugo-Slav peoples.

As to Poland it has been well said by Maurice Maeterlinck: "It is time Europe of to-day should repair the iniquity of Europe of former days" ("Poland for the Poles," George Allen and Unwin (Limited) 1916); and indeed each belligerent professes its desire to do something to this end. How the creation of a "united and independent Polish State" will be realized is a question the solution of which is at present concealed, and it has yet, also, to be proved that any possible Polish State will have the necessary elements of stability. We may hope that the historic injustice of the successive partitions of Poland may be redeemed, but we must wait for the practical means of doing this.

The Jugo-Slavs.

It is, perhaps, more important to notice the growing desire for the recognition of the independence of those parts of the Austrian Empire which are now identified more or less definitely with the Czecho-Slovak and the Jugo-Slav peoples. We gather from a reply given in the House of Commons the other day by Lord Robert Cecil that these terms are matters of common knowledge, and that everyone knows who the Czecho-Slovak and the Jugo-Slav peoples are. Probably he was thinking of Macaulay's schoolboy; but for ordinary folk the terms are new and by no means self-explanatory. We were told a year ago in the statement of Allied War Aims made by Mr. Wilson (10th January, 1917; 61 Solicitors' Journal, p. 644) that one aim was "the liberation of the Italians, as also of the Slavs, Rumanes, and Czecho-Slovaks, from foreign domination," and this, we believe, was for popular purposes the first mention of the Czecho-Slovaks. In fact it is a classing together for the sake of convenience of two Slav races—the Czechs of Bohemia and the Slovaks of Northern Hungary, both of whom suffer under the cruel oppression of Austrian or Magyar dominant classes. But if this is reasonably well known, it takes a little research to discover the meaning of the term "Jugo-Slav." As far as we have noticed, it is not to be found in ordinary works of reference, though others may be more successful in their search than we have been. But whether or not the term was in common use before the war, it has now been adopted to denote the Southern Slavs—in general the Serbs, the Croats and the Slovenes; that is, the inhabitants of Serbia and Slavonia, of Croatia and of Carinthia, the last, we hope, of a more kindly nature now than when Goldsmith wrote:

> "Or . . . where the rude Carinthian boor
> Upon the houseless stranger shuts the door."

Doubtless the Slovenes, if they are now to profit by British help, will forgive the somewhat slighting allusion. It will be noticed that in January, 1917, the Allies' War Aims only spoke

of Slavs, and, indeed, the idea of a new and independent kingdom to embrace all the Southern Slavs—or the Jugo-Slavs—seems to have arisen since then; though when once started, it spread with wonderful rapidity (see *The New Europe*, 14th March, p. 284). It seems, however, to have conflicted with the territorial ambitions of Italy embodied in the Treaty of April, 1915, under which she consented to join the Allies. At any rate Italian distrust had first to be dispelled, and this was done at the Roman Congress of Oppressed Nationalities held last April. One of the resolutions then adopted declared that the unity and independence of the Jugo-Slav nation—Serbs, Croats and Slovenes—was a vital interest of Italy, just as the completion of Italian national unity was a vital interest of the Jugo-Slav nation; and this explains the concurrence of Italy in the recent declaration of the Allied Prime Ministers. That concurrence may, perhaps, be taken to be a definite step towards the realisation of South Slav aspirations, but it is easier to plan States than to establish them.

Bankruptcy Notices and the Courts (Emergency Powers) Acts.

UNDER THE Courts (Emergency Powers) Act, 1914, leave is required before proceeding to execution on a judgment, but leave is not required before presenting a bankruptcy petition: *Re Silber* (1915, 2 K. B. 317). In that case the petition was presented by a judgment creditor, the act of bankruptcy being non-compliance with a bankruptcy notice, but the notice was served and the act of bankruptcy was complete before the war. In the case of notice since the war, however, it appears to be the practice to require leave for the bankruptcy notice to issue, provided the judgment is for a sum of money to which section 1 (1) (*a*) of the Act applies. Under section 1 (1) (*g*) of the Bankruptcy Act, 1914, a bankruptcy notice can be served if the creditor has obtained a final judgment and execution thereon has not been stayed, and it seems to be assumed that the Courts (Emergency Powers) Act, 1914, operates as a stay of execution for the purpose of the bankruptcy notice. We should have thought that this was open to question, for in bankruptcy the time for the court to intervene is on an application under section 1 (3), and to require leave for the service for a bankruptcy notice looks like whittling down *Re Silber* (*supra*). The requirement of leave for service of a bankruptcy notice is also put upon the ground that this is a form of execution (Annual Practice, 1918, pp. 1329, 1356). If the practice as thus stated is correct, then it applies to all judgments which are within the Courts (Emergency Powers) Acts, and, if the judgment is obtained in an action for breach of contract, it applies to a judgment for damages, and no doubt this includes a judgment for damages and costs. But it has been doubtful whether it applied, if such an action was unsuccessful, to a judgment for costs in favour of the defendant. The doubt, however, has been removed by the decision of the Court of Appeal in *Dobb* v. *Henry Dobb* (*Limited*) (*ante*, p. 422), and we print elsewhere a judgment of Mr. Registrar MELLOR in *Re Wachter*, which a correspondent has been good enough to send us, in which this view is adopted, and it is held that leave is now necessary for the issue of a bankruptcy notice founded on a judgment for costs in an action of contract. Incidentally the decision indorses the rule above stated, that leave is required under the Emergency Acts for the issue of a bankruptcy notice.

The Immunity of Foreign Sovereigns from Civil Procedure.

THE PRESENT unsettled condition of the world both for States and for their crowned heads, where such exist, brings into prominence the rules of international law relating to their immunity from civil process in foreign territory. In general a sovereign—the same principle applies to a sovereign State—cannot be sued in the courts of a foreign country unless he has submitted to the jurisdiction, and he does not, by instituting an action on his own account, submit to the jurisdiction in respect of a claim for another and entirely distinct matter; though he submits in respect of all matters incident to the trial of his own claim, such as the giving of discovery: *South African Republic* v. *La Compagnie Franco-Belge du Chemin de Fer du Nord* (1898, 1 Ch. 192). We have received from the Editor of *International Law Notes* a report of a case decided last January in the United States—*Kingdom of Roumania* v. *Guaranty Trust Company of New York* (58 N.Y. Law Journ. 2087)—in which this rule has been applied under somewhat singular circumstances. One ARDITTI, who had a claim for breach of contract against Roumania, brought an action against the Trust Company and Roumania to obtain payment out of moneys of Roumania said to be in the possession of the Trust Company. Roumania had in fact deposited money with the Trust Company, and in a subsequent action by Roumania against the company payment of the deposit was claimed. The company thereupon applied for leave to pay the deposit into court and to have ARDITTI substituted for them as defendant in the second action—an application in the nature of interpleader. It was held, however, by the United States Circuit Court of Appeals that there was no jurisdiction to make the order. The effect of the order, indeed, would have been to let in a claim by ARDITTI, and as regards such claim Roumania had not waived immunity by its action against the company. The subject matter of that action—a debt due by the company—and the subject matter of ARDITTI'S claim—damages for breach of contract—were quite distinct.

The Position of a Deposed Sovereign.

IN ANOTHER American case, which we owe to the same source, it has been held that a deposed sovereign forfeits his immunity. An action was brought in New York by the Marine Transport Service Corporation to make the ex-Czar responsible for a breach of contract by the Russian Government, and it was held by the Supreme Court of New York that the defendant could not claim immunity. This has been criticized in America on the ground that though the legal claim to immunity under International Law is at an end, the claim is still recognised as a matter of courtesy. This, however, is contrary to the rule as laid down by Prof. OPPENHEIM (International Law, Vol. I., p. 432). According to him the law of nations exacts no such courtesy, and the loss of sovereignty entails the loss of the immunity from jurisdiction. It is premature to speak of the "ex-Kaiser," but possibly the future holds further instances of this loss of immunity.

War Mania.

WHEN DELIVERING judgment last week in *Rex* v. *Murray* (*Times*, 5th inst.) Mr. Justice DARLING drew attention to a new form of mental disturbance which is beginning to show its effects in the Criminal Courts, and to which he gave the happy name of "war mania." This phenomenon, as analysed by him, takes the shape of an extraordinary tendency—exhibited by men who in ordinary matters shew normal good sense—to discover the evidences of a "spy" system everywhere. If they dislike a man they imagine him to be of German origin, or at any rate descent; from this it is a short step to the inference that he is a spy in German pay. If they have business difficulties with a rival, he becomes converted in imagination into a German spy. If a Government official does not manage the affairs of the country as they think they ought to be managed, forthwith he undergoes "a sea-change" into something which, if not "rich and strange," is at any rate very remarkable. The cloven hoof of spydom and treachery is immediately discerned in him. The most eminent politicians suffer the same fate at the hands of those who happen to disapprove of their policy; they are said to be in German pay or to be influenced by the possession of a "spiritual home" in Germany. In the particular case before his lordship an author of respectability and talent, the brother of a famous novelist, had a disinterested belief in the value to the country of a certain time-saving device of economic reorganisation, but the Board of Trade declined to investigate the scheme in times of war. Of course, concludes our enthusiast, they must be wilfully and deliberately blind to its obvious advantages; they must be traitors to their country. There is no doubt that Mr. Justice DARLING did not in the least exaggerate the existence and dangerous tendency of this form of "war mania"; what he omitted to do was to point out that some newspapers and some leading public men

have been largely responsible for fostering it by their articles and speeches, and it is not diminished by the innuendoes of the Defence of the Realm Regulations and other war time enactments.

Bias on the Part of a Presiding Judge.

In our notes last week on what is known as the *Pemberton Billing case* we expressed an opinion in favour of the right of a suitor to object to the trial of his case before a judge with whom he had come in conflict in previous legislation. We have been referred in support of this view to the proceedings before the judges in 1876 on the application of Mr. Edwin James (formerly Q.C. and member for Marylebone) to appeal from a decision of the Benchers of the Inner Temple by which he was disbarred. Mr. James, before the commencement of the hearing, objected to the presence of Bovill, C.J., who presided over the court, on the ground that on several occasions his character had been violently attacked by the learned Judge. The Court, among whom were Kelly, C.B., Martin, B., and Blackburn, J., were not disposed to favour the objection, but the matter was settled by the action of Bovill, C.J., who declined to take any further part in the case and forthwith left the room. This case cannot, of course, be regarded as a precedent, but it is of value as shewing how a similar question was considered by a judge of conspicuous ability and experience.

The Doctrine of Non-Feasance.

There are certain doctrines of our common law which cannot be justified on grounds of logic, but which are too ancient and well settled for any modern judge to venture to overrule. Such rules have usually grown up as the result of circumstances, now altered, in which they were once not unreasonable; they have been preserved by the mere force of tradition and authority. The well-known principle, if it can be called a principle, which renders a corporation civilly liable for misfeasance in the performance of any duty which it owes to the public at large, but not liable for non-feasance—*i.e.*, for complete refusal to perform its duty at all—is, perhaps, the most striking illustration of this tendency. The doctrine grew up in days when highway boards, constituted by special Acts or under the earlier Highways Acts, were beginning to take over the duty of repairing highways, which formerly was vested in the inhabitants at large of the parish. If such road was not repaired, then the common law remedy was to indict the ratepayers for the misdemeanour of "nuisance," or rather to indict two of them. If a wayfarer suffered an accident and damage as the result of the non-repairing, he had no civil remedy against the inhabitants at large, for they were too vague a body to be sued at common law. Hence grew up the rule that a highway board, which took over the duties of the parochial ratepayers, could not be sued for omission to repair a highway. By false analogy, as so often happens, the principle was extended to the case of other duties imposed on highway authorities which had quite a different origin. When the Public Health Acts gradually transferred to newly-constituted local authorities the duties of highway boards, these new authorities got the benefit of this immunity, and the illogical rule had become too settled for the courts to interfere with it: *Cowley* v. *Newmarket Local Board* (1892, A. C. 345). Thus tradition and false analogy, coupled with the reluctance of our courts to recast old rules where they are defective in logical basis, combined to found an immensely important, but admittedly anomalous and indefensible rule of law.

The rule, however, although it could not be abandoned, could in practice be limited. It never had applied to cases of "misfeasance," *i.e.*, cases where the corporation performs its duty, but does so in such a negligent manner as to occasion damage; in such cases an action lies for the tort of negligence. Naturally, this afforded a way of escape. And a tendency grew up to give "mis-feasance" a very liberal and extensive construction. The principle of *Geddes* v. *Proprietors of Bann Reservoirs* (3 App. Cas. 430) was applied to public corporations performing a public duty and performing it negligently. In that case Lord Blackburn (at p. 455) had laid it down that an action will lie for doing, in so negligent a manner as to occasion special damage to a member of the public, some duty which the Legislature has either authorized or directed to be performed. This became the settled view of the courts, and found expression in such well-known cases as *Gilbert* v. *Trinity House Corporation* (17 Q. B. D. 795) and *Shoreditch Corporation* v. *Bull* (90 L. T. 210). But in all these cases there was a clear undertaking of some duty by the local authority, and the damage suffered arose directly out of the *mis-feasance*.

It was not until quite recently that a bolder effort was made by common law judges to get round the anomalous rule of non-liability for *non-feasance*. Frontal attacks on the rule had been repulsed when they reached the central fortifications of the House of Lords. But flank attacks might be more successful. And an ingenious flank attack was attempted with the most conspicuous success in the case, now quite a leading authority, of *McClelland* v. *Manchester Corporation* (1912, 1 K. B. 118). The success of this manœuvre led to its repetition with equally conspicuous good fortune in the later case of *Thompson* v. *Bradford Corporation* (1915, 3 K. B. 13). An even more daring effort to extend the ground thus gained has just been made in *Moul* v. *Croydon Corporation* (1918, W. N. 194). The attack got home before the judge of the Croydon County Court, but on appeal the Divisional Court reversed his decision and reaffirmed once more the non-feasance doctrine in all its pristine force. A brief study of these three cases will perhaps repay our attention.

McClelland v. *Manchester Corporation* (*supra*) seemed at first sight the most obvious of *non-feasance* cases. The defendant corporation had taken over a street which had been dedicated to the public by its owner. The street was a *cul de sac*, ending in a natural ravine. The corporation made it up, paved and lighted it under their statutory powers. But they left the ravine unfenced. The plaintiff's motor-car, running down the street at night, came unawares on the ravine, could not pull up in time, and suffered serious damage in consequence. This certainly looks like *non-feasance*, the failure to fence a ravine, and not like *mis-feasance*. But the trial judge directed the jury that the corporation had a statutory duty to maintain the street by lighting and paving it; that that mode of performing the duty, by lighting and paving alone without any fencing of the ravine, was negligent since it practically invited the public to use a hidden trap, and that therefore the omission to fence the ravine was *mis-feasance* in the making up of the street. The decision is only the *nisi prius* decision of a trial judge, Lush, J., with a special jury; but it has generally been accepted as authoritative.

Thompson v. *Bradford Corporation* (*supra*) is a much more authoritative decision, however, for it is that of a Divisional Court on appeal from a county court judge; the members of the court were Bailhache and Shearman, JJ. Here the Bradford Corporation were the owners of a highway carrying very heavy traffic, but at one point very narrow. They put in force powers conferred by a special Act to widen the highway; this was done by setting back the kerbstone and throwing the causeway into the road. On the edge of the causeway was a telegraph pole: this the Post Office controlled. At the request of the corporation the Postmaster-General directed the pole to be removed and the hole filled in; this done, the road was thrown open to traffic. Soon afterwards the plaintiff's steam wagon was using the road and was damaged through a wheel sinking in the hole. Here again *non-feasance* was pleaded, and *mis-feasance* was alleged in rebuttal. The suggested mis-feasance lay in this: the corporation had widened the road, thereby inviting the public to use it, but had done it so negligently as to leave an unfenced or unfilled hole, corresponding to the unfenced ravine in *McClelland* v. *Manchester Corporation*. This view the Divisional Court accepted, and the case just named was definitely approved as sound and binding.

Perhaps it is not very surprising that a county court judge should have let these decisions lead him into temptation; this happened in *Moul* v. *Croydon Corporation* (*supra*). Here the Croydon Corporation had paved with wood blocks a road which

it was their statutory duty as road authority to maintain. Owing to a heavy rainfall the wood swelled and bulged to the extent of four or five inches, thereby leaving a dangerous obstruction in the road. An omnibus swerved and skidded as the result of this low obstruction, and an accident to the plaintiff—a passenger in the 'bus—followed. Now if the road authority, in repairing the road, had left an obstruction, this would clearly have been actionable *mis-feasance*. But they had not done so: subsequent rainfall caused the obstruction, and they had merely omitted to repair it. This is just as clearly a non-actionable case of mere *non-feasance*. But the county court judge took an ingenious and somewhat over-subtle view, based on the cases we have just been discussing. He held that paving with wood instead of with tar naturally leads to the bulging of the road in wet weather: it sets a "hidden trap" for the users of the road, and therefore is *mis-feasance*. Of course, a Divisional Court—however sympathetic—felt obliged to overrule this ingenious finding, and the non-liability of the corporation was affirmed by them on appeal.

An Epitome of Recent Decisions on the Workmen's Compensation Act.

By ARTHUR L. B. THESIGER, ESQ., Barrister-at-Law.

Cases decided since the last Epitome (Vol. 62, p. 173).

(1) DECISIONS ON THE WORDS "ACCIDENT ARISING OUT OF, AND IN THE COURSE OF, THE EMPLOYMENT."

Charles R. Davidson & Co. v. *M'Robb or Officer* (H.L.: Lord Finlay, C., Viscount Haldane, Lords Dunedin, Atkinson and Parmoor, 15th, 19th, 20th November, 1917; 28th January, 1918).

FACTS.—The chief engineer of a ship which was lying beside a quay in docks at Ramsgate went ashore with leave for his own purposes. He returned on a dark night, and was seen walking towards the place where the ship was moored. He did not reach the ship, and his body was subsequently found in the dock about seventy yards from the place of access from the quay to the ship. The sheriff-substitute held that the accident had not been shewn to arise out of the employment, but the First Division of the Court of Session reversed his decision, and awarded compensation.

DECISION (Lord Finlay, C., dissenting).—The applicant failed to shew that the accident arose out of, and in the course of, the employment. Appeal allowed. (Case reported SOLICITORS' JOURNAL, 2nd March, 1918, p. 347; *Times*, 29th January, 1918; *W.N.*, 2nd February, 1918, p. 23; *L.T.* newspaper, 9th February, 1918, p. 256; *L.J.* newspaper, 9th February, 1918, p. 50.)

Allcock v. *Rogers* (H.L.: Lord Finlay, C., Lords Atkinson, Parker and Wrenbury, 22nd March, 1918).

FACTS.—A potman employed by a publican was cleaning a brass plate outside the public-house when he was knocked down by the concussion caused by the exploding of a bomb dropped from enemy aircraft in the street some distance away. The county court judge awarded him compensation, but his decision was reversed by the Court of Appeal.

DECISION.—There was no evidence that the spot at which the potman was working was specially exposed to the risk of bombs, and therefore he was not entitled to compensation. (Case reported SOLICITORS' JOURNAL, 30th March, 1918, p. 421; *W.N.*, 6th April, 1918, p. 96; *L.T.* newspaper, 6th April, 1918, p. 401; *L.J.* newspaper, 6th April, 1918, p. 108.)

Stevens v. *London and South-Western Railway Co.* (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 23rd April, 1918).

FACTS.—An engine driver, whose engine was standing outside the engine shed, got down from the engine with his fireman, and they trimmed the shovel used for stoking on the rails. While they were doing so a light engine came along and killed the engine driver. It was no part of the duty of the engine driver or fireman to trim the shovel. The county court judge held that the engine driver had either gone outside his employment or taken upon himself an added risk which caused the accident.

DECISION.—There was evidence on which the county court judge could come to this conclusion. (*From note taken in court.* Case reported *L.T.* newspaper, 4th May, 1918, p. 7; *L.J.* newspaper, 11th May, 1918, p. 165.)

Wilson v. *London and North-Western Railway* (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 24th April, 1918).

FACTS.—A platelayer was returning by train from work. The train slowed down when passing a shed where he wished to leave his tools, and he jumped out, missed his footing, and was killed. Evidence was given that the employees of the railway knew that it was against the company's rules to leave a train in motion. The county court judge held that the workman took an added risk for his own convenience, and that the accident did not arise out of the employment.

DECISION.—The judge was right. (*From note taken in court.* Case reported *L.J.* newspaper, 11th May, 1918, p. 166.)

Knyvett v. *Wilkinson Brothers* (*Limited*) (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 25th and 26th April, 1918).

FACTS.—A man was walking along a street on his employer's business when a bomb was dropped from hostile aircraft, causing him injuries from which he died shortly afterwards. The county court judge refused to award compensation to his dependants.

DECISION.—There was no special danger in the spot to which the workman was sent; the risk of being injured by a bomb was not a risk specially attaching to persons passing along the streets, and the risk incurred by the workman was one common to all who might be near the spot at the time; therefore his dependants were not entitled to compensation. (*From note taken in court.* Case reported *L.T.* newspaper, 4th May, 1918, p. 6.)

Janes v. *South-Eastern and Chatham Railway Companies Managing Committee* (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 26th April, 1918).

FACTS.—A charwoman employed to clean certain offices injured her thumb and suffered from septic poisoning. Her story was that the injury was caused by her pressing the loop of a towel over a nail in the wall at the employers' offices. She stated she had made a complaint to a friend, and evidence of the friend was tendered to state what account of the accident the charwoman had given her. This evidence was rejected by the county court judge. Several witnesses for the employers stated that the charwoman had told them she had scratched her thumb on a rusty nail at home. The judge held that the charwoman had failed to prove that the accident happened on the employers' premises as she alleged.

DECISION.—The judge had rightly rejected the evidence of the charwoman's friend, and there was evidence on which he could arrive at the decision which he did. (*From note taken in court.* Case reported *L.T.* newspaper, 16th May, 1918, p. 49.)

Kemp v. *Clyde Shipping Co.* (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 30th April, 1918).

FACTS.—A stevedore sustained a rupture while at work on the 29th March, 1917. He went to a hospital, and was successfully operated on for hernia. He was discharged from hospital on the 14th April; he then looked ill and emaciated, and, according to the evidence, his vitality was then so low that his lungs were fertile soil for the reception of tubercular bacilli. He got worse, and entered an infirmary on the 22nd September, where he died on the 12th December, 1917, from pulmonary tuberculosis. His dependants claimed compensation on the ground that his death resulted from the accident. The medical evidence shewed a state of facts consistent, but not necessarily consistent, with this view. The county court judge held that it had not been proved that death resulted from the accident.

DECISION.—The judge was right. (*From note taken in court.* Case reported *L.T.* newspaper, 25th May, 1918, p. 67.)

Doolan v. *Henry Hope & Sons* (*Limited*) (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 30th April, 1918).

FACTS.—A fitter was chipping at a brick wall when a chip struck him in the left eye. The eye was examined by a fellow workman, and on his reaching home by the fitter's mother and brother. No substance was found in the eye or eyelid. The eye got worse, and was subsequently found to be suffering from gonorrhœa infection. Ultimately he lost the sight of the eye. No other trace of syphilis or gonorrhœa was found in him. The county court judge found that the loss of the eye was not caused by the original accident aggravated by the entry of the *coccus* gonorrhœa into the eye, but that the eye was lost from a new and entirely independent cause.

DECISION.—There was evidence to support the judge's finding, and he had not misdirected himself. (*From note taken in court.* Case reported *L.T.* newspaper, 11th May, 1918, p. 26.)

Philbin v. *Hayes* (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 30th April and 1st May, 1918).

FACTS.—A contractor was engaged on the extension of munition works. Owing to the scarcity of lodging accommodation in the neighbourhood he had a number of huts erected in which he housed those workmen who could not find lodgings elsewhere. The men so housed paid 2d. a night, which was half the cost of keeping the hut cleaned. Their work ended at 5.30 p.m. for the day, and there was obligation

imposed by the contract of service requiring the men to use the huts. One night at 10 p.m. there was a heavy gale which wrecked one of the huts and caused serious injuries to one of the workmen. The county court judge held that the man was in continuous employment, and that, therefore, the accident arose out of, and in the course of, the employment.

DECISION.—The accident did not arise in the course of the employment. Appeal allowed. (*From note taken in court.* Case reported SOLICITORS' JOURNAL, 11th May, 1918, p. 519; *Times*, 2nd May, 1918; *L.T.* newspaper, 11th May, 1918, p. 25; *W.N.*, 18th May, 1918, p. 166.)

Gray v. *Sopwith Aviation Co.* (*Limited*) (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 2nd May, 1918).

FACTS.—A labourer was found lying dead at 11 p.m. on a Saturday night in a room used by his employers as a testing room. The door was locked with two locks, although usually left unlocked. He was found lying on the floor with his head on a stool close to a gas pipe which was turned on and escaping. The fanlights of the room were open, and there was some ventilation, but death was caused by gas poisoning. The workman had no right to be in the room on a Saturday afternoon. The county court judge held that it had not been proved that the workman's death was caused by an accident arising out of, and in the course of, his employment.

DECISION.—It was impossible to say that on the evidence the judge ought to have drawn a different conclusion. (*From note taken in court.* Case reported *L.T.* newspaper, 18th May, 1918, p. 48.)

(2.) MISCELLANEOUS DECISIONS.

Cross v. *Whitehead Aircraft* (*Limited*) (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 23rd April, 1918).

FACTS.—A workman met with an accident for which he claimed compensation. At the hearing, after the evidence was completed, but before the county court judge had delivered his award, the employers offered to take the workman back in a suitable occupation at his old rate of wages. The judge refused to take this offer into account, and made an award in favour of the workman. The employers appealed from that part of the award which ordered payment of compensation after the date of the hearing.

DECISION.—Such an offer ought to have been considered by the county court judge. If an adjournment was necessary, the judge could order the party who made it necessary to pay the costs occasioned by the adjournment. The case must go back for reconsideration by the judge. (*From note taken in court.* Case reported *L.T.* newspaper, 4th May, 1918, p. 7.)

Kloosterman v. *Vickers* (*Limited*) (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 23rd and 24th April, 1918).

FACTS.—An engineer's fitter met with an accident which necessitated the removal of one of his eyes. He was paid £1 a week for five months, when the employers stopped paying compensation. Four months later the workman started proceedings for compensation, alleging that he was still totally disabled. The employers proved that they had offered him work at his old rate of wages, but that he had refused to accept it, and the county court judge thereupon made an award in favour of the respondents. A declaration of liability was made, although the workman did not ask for it. The judge ordered the employers to pay the costs.

DECISION.—There were no materials on which the judge could rightly exercise his discretion by ordering the employers to pay the costs. (*From note taken in court.* Case reported *L.T.* newspaper, 18th May, 1918, p. 49.)

Edge v. *Green* (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 24th, 25th and 29th April, 1918).

FACTS.—A sawyer was injured and paid compensation for a time. He and his employers then agreed that the compensation should be 1d. a week until such payment was altered or redeemed. The workman applied to have that agreement recorded. With the agreement he sent a statement as required by the Workmen's Compensation Rules in which he inaccurately stated his average weekly earnings as £2 9s. instead of £2 4s. 7d. The agreement was recorded, but not the statement. Later the workman applied for payment of compensation on the basis of £2 9s. as his average weekly earnings. The employers then applied for an order that the record of the agreement should be rectified in respect of the average weekly earnings, and the county court judge made the order.

DECISION.—There being no statutory provision requiring the statement to be entered on the register, no such entry was essential. The workman's claim was erroneous, as there was no agreement filed which stated that his average weekly earnings were £2 9s. The employers' application was also erroneous, as there was no memorandum recorded which stated what the average weekly earning had been. The judge had no jurisdiction to order a statement made by a person to be altered; if it was untrue, the proper course was to return it. (*From note taken in court*, *L.T.* newspaper, 11th May, 1918, p. 26; *L.J.* newspaper, 25th May, 1918, p. 160.)

Venters v. *Sundridge Park Golf Club* (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 26th April, 1918).

FACTS.—A girl employed in the kitchen of a golf club alleged that she cut her finger on a piece of broken glass which was among some dishes she had to wash, and that she told the stewardess, who was the person who engaged and discharged girls who were employed in the kitchen, on the next morning how the accident had happened. The pain got worse, and she had to stay away from work for some time. She brought a claim for compensation against her employers, for whom evidence was given that the girl had stated she was suffering from a whitlow, and that she had never met with any accident. They also put forward the defence that no written notice of the accident had been given, and that they had in consequence been prejudiced in their defence. The county court judge accepted the girl's evidence, held that oral notice of the accident had been given to the stewardess, and that the employers had not been prejudiced.

DECISION.—There was evidence to support the judge's finding, and he had not misdirected himself by treating the oral notice as a sufficient statutory notice. He had merely referred to it as a fact which shewed that the employers had not been prejudiced by want of notice. (*From note taken in court.* Case reported *L.T.* newspaper, 25th May, 1918, p. 67.)

H. D. Rawlings (*Limited*) v. *Hodgson* (C.A.: Swinfen Eady and Bankes, L.JJ., and Neville, J., 1st and 2nd May, 1918).

FACTS.—A van traveller met with an accident, and was paid £1 a week for some time. As he became able to work the compensation was gradually reduced to 11s. 11d. a week. After that sum had been paid for some time there were negotiations for a settlement. While the parties were negotiating, the workman on the 19th November, 1917, filed a request for arbitration, claiming 12s. a week. By leave of the judge the claim was subsequently amended to £1 a week. Before the amendment, on the 5th December, an agreement for settlement was come to by which the workman was to receive £175 in full discharge. The registrar refused to record the memorandum of agreement on the ground that the sum was inadequate, and the county court judge upheld his decision.

DECISION.—The registrar had no discretion to refuse to record the agreement. There had never been any agreement fixing for the future any particular sum as weekly compensation, so the agreement was not one for the redemption of a weekly payment within Schedule II. (9). (*From note taken in court.* Case reported SOLICITORS' JOURNAL, 18th May, 1918, p. 534; *L.T.* newspaper, 18th May, 1918, p. 48.)

CASES OF THE WEEK.

Court of Appeal.

***In the Matter of the* IMPERIAL TOBACCO'S TRADE-MARKS and *In the Matter of the* TRADE MARKS ACT, 1905.** No. 1. 29th and 30th May.

TRADE-MARK—MOTION TO RECTIFY REGISTER—COMMON WORDS—"REGIMENTAL"—MARK ORIGINALLY NOT REGISTRABLE—VALID AFTER SEVEN YEARS' REGISTRATION—"DISENTITLED TO PROTECTION IN A COURT OF JUSTICE"—TRADE MARKS ACT, 1905 (5 ED. 7, C. 15), SS. 11, 35, 41.

Under the Trade Marks Act, 1905, *s.* 41, *a trade-mark is to be valid in all respects after the lapse of seven years from the date of registration, unless it was obtained by fraud or offends against section* 11 *of the Act, and under section* 11 *it is unlawful to register any matter the use of which would, by reason of being calculated to deceive, or otherwise, be disentitled to protection in a court of justice.*

Held, that the word "Regimental" as a trade-mark applicable to cigarettes could not be removed from the register under section 11 *after being on it for seven years merely on the ground that it might not contain the essential elements prescribed by section* 9. *Section* 11 *must be read as being independent of and supplemental to section* 9 *of the Act, and not directed to the matters therein dealt with.*

Decision of Astbury, J. (*ante, p.* 422), *in part reversed.*

J. Wigfull & Sons (Limited) *v* J. Jackson & Son (Limited) (1916, 1 *Ch.* 213) *overruled.*

Appeal by the Imperial Tobacco Co. (Limited) from a decision of Astbury, J. (reported *ante*, p. 422), in an action for an injunction to restrain infringement and passing off. The defendant denied both infringement and passing off, and moved to have the marks removed from the register. In 1885 F. & J. Smith, of Glasgow, tobacco manufacturers, registered the words "Regimental Cigarettes" as a trade-mark, and from 1893 sold special leaf-tipped cigarettes by weight as "Smith's Regimental Cigarettes." In 1901 their business was taken over by the Imperial Tobacco Co., who in 1908 registered the word "Regimental" for tobacco. The sale of the cigarettes was never very large. In 1916 the defendant, trading as Pasquali & Co., without knowing of the above trade-mark, commenced to sell cigarettes in boxes of 20, 50 and 100 under the brand Pasquali's "The Regiment"

cigarettes, which speedily attained a very large sale. The boxes bore regimental crests. The Imperial Tobacco Co. thereupon commenced this action, and the defendants moved therein to have the marks removed from the register on the ground (*inter alia*) that at the date of registration the word "Regimental" was not distinctive, but merely laudatory or descriptive, and therefore incapable of registration under section 9. There was evidence that for many years past it was a common practice for regiments to have their crests marked on cigarettes, which were then known as the regimental cigarettes. Astbury, J., held there had been no infringement and no passing off, the defendant's get-up being essentially different, and on the defendant's motion ordered the plaintiffs' marks to be removed from the register. The plaintiffs appealed from this latter order.

THE COURT allowed the appeal.

SWINFEN EADY, M.R., said the appeal was from an order of Astbury, J., directing two trade-marks to be removed from the register. An action was brought by the plaintiff company against the defendant for infringement and passing off. That action was dismissed, and from that decision there was no appeal; but the judge had ordered both marks to be removed from the register on the ground that they offended against section 11 of the Trade Marks Act, 1905. It was argued as to the first mark, "Regimental Cigarettes," that it ought never to have been registered at all, as it had a direct reference to the character and quality of the goods; and as to the second that it was commonly used as a laudatory and descriptive epithet, and therefore should not have been registered. [His lordship then read section 41, observing that the present was an application under section 35, and proceeded:] It was common ground that the marks were to be taken to be valid in all respects, unless they offended against the provisions of section 11. That section contained a prohibition against what was not lawfully registrable, and followed on section 9 dealing with the essentials of a registrable trade-mark. In his lordship's opinion section 11 was a qualification upon section 9, which pointed out the essential elements that a trade-mark, to be registrable, must contain or consist of. There was no necessity to prohibit anything not coming within section 9. A mark might come within section 9, and yet offend against section 11, if it contained any matter which was calculated to deceive or was otherwise disentitled to protection in a court of justice. Sections 11 and 41 must be construed together. In his lordship's opinion section 11 formed a new departure in trade-mark law; its language was widely different from anything in the Acts of 1875 and 1883. Under the earlier Act, in *Re Palmer's Trade-Marks* (21 Ch. D. 47), the Court held that if the mark ought not to have been put on the register at all, it ought to be taken off. Section 41 was quite different; the register of trade-marks was to be taken to be valid in all respects unless it was obtained by fraud or offended against the provisions of section 11, which was intended to exclude what might otherwise be covered. It did not extend to and include a mark which was not entitled to protection, because it did not contain one of the essential elements required by section 9. Instances of matter that would be disentitled to protection would be anything blasphemous, seditious, or indecent. The only way in which it could be said that the marks in question were disentitled to protection under section 11 was on the ground that they were lacking in some of the essential elements required by section 9. It was only necessary to compare the language with that of the earlier statutes to see the difference, and the considerable protection now given to a mark registered for over seven years. On this construction the rights of individual traders were protected. The learned Judge below followed the decision of Neville, J., in *J. Wigfull & Sons (Limited)* v. *J. Jackson & Son (Limited)* (1916, 1 Ch. 213), where he held that a mark, if at the time it was originally registered ought not to have been protected, should not only not be protected by injunction, but should be removed from the register. In that case the plaintiffs' use of the mark was purely local, and they did not know, as the fact was, that it was common to their trade. The criticisms of the Judge in that case were not well founded, and although the mark, it might be, should not have been registered, it did not come within section 11. That case, therefore, was wrongly decided. The construction of the statute was reasonably free from error, and to say that every mark not properly registered was disentitled to protection in a court of justice could not be maintained. The appeal must be allowed, and the order removing the marks from the register discharged.

WARRINGTON, L.J., who observed that the fact that a manufacturer used his name as well as his trade-mark upon his goods, did not prevent the mark from being distinctive of the maker's manufacture; and

DUKE, L.J., delivered judgment to the same effect.—COUNSEL, *Walter*, K.C., and *Sebastian; Colefax*, K.C., and *J. Hunter Gray; Austen-Cartmell*. SOLICITORS, *McKenna & Co.*, for *Robert Still*, Bedminster, Bristol; *C. Urquhart, Fisher & Co.; Solicitor to Board of Trade*.

[Reported by H. LANGFORD LEWIS, Barrister-at-Law.]

High Court—Chancery Division.

EVANS *v.* SHOTTON. Eve, J. 28th May.

SETTLEMENT—COVENANT BY TENANT FOR LIFE TO REPAIR—"GOOD AND TENANTABLE REPAIR"—RULE AS BETWEEN LANDLORD AND TENANT APPLIED—DECORATIVE REPAIRS—FORM OF REFERENCE—ARBITRATION ACT, 1889 (52 & 53 VICT. C. 49), S. 13.

The rule laid down in Proudfoot *v.* Hart (25 *Q. B. D.* 42), *with regard to what is "good and tenantable repair" as between landlord and tenant, applies to a tenant for life under a covenant to repair in a settlement. The tenant for life, therefore, must put the premises into such a condition as to satisfy a reasonably-minded tenant of the class who would be likely to take them.*

By a settlement made on 29th March, 1912, by way of compromise the first defendant conveyed a residential country house and other premises to trustees upon trust for the defendant for life and after his death for the plaintiff in fee simple, and it was agreed and declared that the defendant should keep the settled buildings and premises in good and tenantable repair, and should keep the grounds in a proper state, and insure the buildings, furniture and effects against loss by fire. The plaintiffs, the trustees and remainderman in fee, alleged that the messuages and buildings, which were valued at £7,000, were not being kept in good and tenantable repair and condition by the defendant, and they claimed specific performance of the agreement by the defendant to keep the premises in good and tenantable repair. The question now before the Court was as to the proper form of the reference to a special referee for inquiry as to the condition of the buildings. The defendant alleged that the buildings were old at the date of the settlement, and that he had fulfilled his obligations under the agreement by keeping the messuages and buildings in at least as good a state of repair as they were at the date of the settlement. It was contended that the rule in *Proudfoot* v. *Hart* (25 Q. B. D. 42), did not apply, and that the direction to the referee ought to be qualified by a special direction.

EVE, J.—The question in this case turns on the concluding paragraph of the agreement in the settlement with regard to repairs by the tenant for life. With regard to the messuages and buildings there must be a reference to a special referee under section 13 of the Arbitration Act, 1889, and the question is as to the form which such reference should take. The meaning of the words "good and tenantable repair" has been settled by law. In the case of *Proudfoot* v. *Hart* (25 Q. B. D. 42) it was decided that a tenant under an obligation to keep premises in good and tenantable repair does not satisfy the covenant by keeping the premises in as good a state of repair as they were in when he entered into possession. But it is said that that rule does not apply in the present case because the words occur in a settlement and not in a lease, and the covenant to repair is by the tenant for life and not by a lessee. No authority has been produced in support of that contention, and I see no reason to differentiate between a tenant for life and a lessee. In both cases the words must bear the construction which has been judicially placed upon them. I think, therefore, that there is an obligation on the tenant for life to put the premises in good and tenantable repair, and that the direction in the reference must be the same as if the parties were landlord and tenant. Then comes the question whether the inquiry ought to be qualified by the words of Lopes, L.J., in *Proudfoot* v. *Hart*, where he says: "Most clearly also he is not bound to do repairs which are merely decorative. But if at the end of the term the paper and paint are in such a condition as to cause portions of the premises to go into decay, he is bound to repaper and repaint to such an extent as will satisfy the terms of the definition which I have stated. Again, if the paint through lapse of time has worn off, or the paper has become worn out, so that their condition has become such as not to satisfy a reasonably-minded tenant of the class who would be likely to take the house, then he must repaper and repaint so as to make the premises reasonably fit within the definition for the occupation of such a tenant." I cannot read the sentence as to decorative repairs without the necessity to satisfy a reasonable tenant. There must, therefore, be a direction to the referee to report as to what ought to be done to make the premises fit for occupation by a reasonable tenant of the class who would be likely to take them.—COUNSEL, *Maugham*, K.C., and *Topham; Clayton*, K.C., and *T. T. Methold*. SOLICITORS, *Walbrook & Hosken; Rawle, Johnstone & Co.*

[Reported by S. E. WILLIAMS, Barrister-at-Law.]

Bankruptcy Case.

***Re* P. WACHTER.** ***Ex parte* GRANT HUGHES & CO.** Mr. Registrar Mellor. 30th May.

BANKRUPTCY—BANKRUPTCY NOTICE—JUDGMENT FOR COSTS IN ACTION FOR BREACH OF CONTRACT—BANKRUPTCY ACT, 1914 (4 & 5 GEO. 5, C. 59), S. 1 (1) (G)—COURTS (EMERGENCY POWERS) ACT, 1914 (4 & 5 GEO. 5, C. 78), S. 1 (1) (A).

Leave under the Courts (Emergency Powers) Acts is required before the service of a bankruptcy notice founded on a judgment for costs in an action of contract.

Dobb *v.* Henry Dobb (Limited) (*ante*, p 422; ~~182~~ *L. T.* 244; *W. N.*, 1918, p. 105) *applied*.

Petition in bankruptcy founded on a bankruptcy notice. The debtor Wachter was the plaintiff, and the petitioners Grant Hughes & Co. were the defendants in an action brought in the King's Bench Division for damages for breach of a contract for the sale by the defendants to the plaintiff of white curd soap, the contract being contained in letters dated in October and November, 1917. The writ was issued on 7th December, 1917, and the action was tried in the Commercial Court on 5th March, 1918, when judgment was given for the defendants with costs. The defendants' costs were taxed at £71 14s. 5d., and a bankruptcy notice was issued by the defendants on the judgment, without leave being obtained under the Courts (Emergency Powers) Acts. It was objected that this leave was necessary.

Mr. Registrar MELLOR.—The petition is based on a judgment or order dated 5th March, 1918, and made in an action which was brought

by the debtor against the petitioning creditors in respect of an alleged breach of a contract entered into between the parties since 4th August, 1914. The action failed, and the petitioning creditors' debt of £71 14s. 5d. is the amount of the defendants' (*i.e.*, the petitioning creditors') taxed costs of the action. The debtor is not an officer or man in His Majesty's Forces, and the only point taken on his behalf at the hearing of the petition was that leave to proceed to execution on or otherwise to the enforcement of the judgment or order was necessary under the Courts (Emergency Powers) Act, 1914, and that in consequence of no such leave having been obtained the bankruptcy notice was wrongly issued and was invalid. The authority relied on was the recent decision of the Court of Appeal in the case of *Dobb* v. *Dobb* (*supra*). The action in that case was brought in respect of an alleged breach of a pre-war contract, whereas in the present case the action which failed was in respect of a post-war contract. But in my opinion that distinction does not prevent the decision in *Dobb* v. *Dobb* from governing this case. The Master of the Rolls says this in his judgment: "The difficulty is to determine what is a sum of money to which this sub-section applies. The Act does not contain any provision which in terms define it. It proceeds to exclude certain monies from the Act, leaving it to be inferred that what is not excluded must be deemed to be included. . . . It is urged that the Act ought to be limited to monies payable under some contract, but I see no ground for so limiting it. This would be merely guessing at what the Legislature intended. . . . The scheme of the Act of 1914 was, in my opinion, to embrace within it all judgments or orders for any sum of money, unless excluded, and then to leave it to His Majesty in Council to exclude from time to time whatever might be thought necessary or proper." Lord Justice Bankes says: "In my opinion an order directing the payment of costs does come within the very wide language of section 1, sub-section 1 (a), and does not come within the exceptions to that sub-section." I am therefore of opinion, having regard to the judgment in *Dobb* v. *Dobb*, that leave to issue execution on this judgment or order for costs was necessary, and as none was obtained, the bankruptcy notice was invalid, and the result is that no act of bankruptcy has been committed, and the petition must be dismissed. Having regard to the fact that the bankruptcy notice was issued on 28th March, which was only two days after the delivery of the judgments in *Dobb* v. *Dobb*, I do not think it was unreasonable that the petitioning creditors' solicitor had not by that realized the importance of that decision, which must cause some alteration in the practice in the Bankruptcy Division, and I shall therefore dismiss the petition without costs.—COUNSEL, *J. G. Inglis*, for debtor. SOLICITORS, for debtor, *J. B Howard & Co.*; for petitioning creditors, *Mills & Morley*.

[COMMUNICATED.]

CASES OF LAST SITTINGS.

Court of Appeal.

JONES AND SON *v.* WHITEHOUSE. 16th April.

SOLICITOR—COSTS—BILL—NO APPLICATION TO TAX DURING TWELVE MONTHS—ACTION ON BILL—APPLICATION FOR JUDGMENT UNDER ORDER 14—LEAVE TO DEFEND—NO SPECIAL CIRCUMSTANCES—OBJECTION TO CERTAIN ITEMS AS UNREASONABLE—RIGHT TO TAXATION.

A signed bill of costs was delivered by a firm of solicitors. The client did nothing for more than twelve months, and the solicitors applied for judgment under order 14 for the amount of the bill. Before the district registrar the client asked to have the bill taxed, but that was refused, and leave given to sign final judgment for £64 1s. 3d., the amount claimed. On appeal to the Judge in chambers, the defendant's affidavit alleged that the charges were unreasonable, and, in particular, he objected to three items. The Judge dismissed the appeal. The defendant appealed. There were no special circumstances entitling the defendant to taxation under section 37 of the Solicitors Act, 1843.

Held, that where a client who has allowed twelve months to pass without attempting to have a bill of costs taxed, is nevertheless able, when sued on the bill, to show a plausible objection to particular items as being unreasonable or excessive, he is entitled to have leave to defend as to the special items only, such leave being granted him under the general jurisdiction of the Court. In the present case the affidavit did not set out any reasonable grounds of objection to the items challenged, and therefore leave to defend had rightly been refused.

Re Park (41 *Ch. Div.* 326) *explained and applied.*

Appeal by the client from an order of Salter, J., in chambers. The plaintiffs, a firm of solicitors, delivered to the defendant, on 27th November, 1916, a signed bill of their costs for professional services amounting to £64 1s. 3d. On 13th November, 1918, no application to tax the bill having been made by the defendant, the plaintiffs issued a writ, under order 14, for leave to sign final judgment for the amount of the bill. Before the district registrar the defendant's solicitor applied that the bill should be taxed. This application was refused, and leave given to sign judgment for the full amount of the bill. On appeal to the Judge in chambers, the defendant made an affidavit stating that he considered the charges in the bill to be excessive generally, and in particular he specified three items. The Judge dismissed the appeal, and the defendant appealed.

PICKFORD, L.J., in dismissing the appeal, said: The bill in question was delivered more than twelve months before the summons for leave to sign final judgment, under order 14, was taken out by the plaintiffs. He thought the contention on each side was put too high. The defendant's contention was that, although the bill had been delivered more than twelve months, and no objection to any of the items had been taken by him, nor had he applied for a taxation, nevertheless, if he could shew a reasonably plausible objection to some of the items in the bill he could claim to have the whole bill taxed as if he had not allowed the twelve months to elapse. For himself he could find no authority for that contention. On the other hand, the plaintiffs' contention seemed to go almost the length of asserting that if the client failed to apply for taxation within the twelve months, and no special circumstances were shown for the delay, the client could not contest the reasonableness of any of the items on the bill. Such a contention was not in accordance with the decision in the case of *Re Park* (1889, 41 Ch. Div. 326). There were here no special circumstances shewn, and on the authority of that case he thought that the taxation of a bill could not, in the circumstances of this case, be obtained under the Solicitors Act, 1843. It was convenient to consider what was the position apart from the Act. At one time the common law counts would not have allowed an objection to the reasonableness of the items to be taken at *nisi prius*. Then came the decision in *Park's case* (*supra*); that was the case of a bill of costs carried in in an administration action. The Court treated the matter as if an action had been brought upon the bill. More than twelve months had elapsed since the bill was delivered; no special circumstances were shewn, and no objection had been made to the bill, and the testator had made a payment on account.

Stirling, J., held that the executor was not estopped from disputing any of the items, and referred the bill to the taxing master to inquire whether the items objected to were fair and proper to be allowed. The taxing master was the more appropriate person to deal with that question than the judge himself, and on that point the Court of Appeal affirmed his decision. *Park's case*, therefore, decides that, although there was no right to have the Bill taxed under the Solicitors Act, yet, if the client could point out any items as being extravagant, he could have those items, and those items only, inquired into. That was done in that case, and the order made at what was the equivalent to the trial of the action. In the present case this Court has to deal with the matter upon an application for leave to sign final judgment, under order 14. The Court must deal with it on the same principle, and was not entitled to say that, if the defendant could point out items in the bill as being apparently unreasonable, that was enough to entitle him to have leave to defend as to the whole bill and to have the whole bill taxed. If the defendant could specify certain items as being extravagant, and could then shew a plausible ground of defence as to them, he could have those items, and those items only, taxed, but not the whole bill. Though there was no right to have the bill taxed under the Act, the Court could still, under its general jurisdiction, order any of the items to be inquired into. The affidavit in the present case did not shew a plausible ground of complaint as to any of the items. The Court could not say that the Judge was wrong in deciding that no plausible ground of defence had been shewn in respect of any of the items in the bill so as to entitle the defendant to an order to tax those items. The appeal therefore failed.

WARRINGTON, L.J., in agreeing, said: The sole question was whether the defendant should have leave to defend in an action brought to recover the amount of a bill of costs, delivered under circumstances already stated. In the case of *Re Park* (*supra*) Stirling, J., and the Court of Appeal had dealt with a similar claim as if it were an action at law, and as if the Court were dealing with it at the trial. Stirling, J., upon that footing, held that at the trial the defendant would be allowed to question the reasonableness of the particular items in the bill which were objected to, and to have the items settled by the tribunal. In what way they should be settled in any particular case was a mere matter of convenience. In *Park's case* Stirling, J., referred the items to the taxing master, and the Court of Appeal affirmed his order. Acting on that decision, if the defendant had, in the present case, shewn some reasonable and probable ground for stating that some of the items were open to objection on the ground of unreasonableness or otherwise, he would have been entitled to an order giving him leave to defend for the purpose of questioning, not the bill as a whole, but the reasonableness of those items, and to have had them taxed. In the present case that was not what the defendant had done. He had not shewn any reasonable and probable ground for contesting the reasonableness of any of the items.

SCRUTTON, L.J., agreed. Appeal dismissed.—COUNSEL, for the appellant, *G. W. Powers*; for the respondent, *J. B. Matthews*, K.C., and *C. E. Jones*. SOLICITORS, *Rawson & Stevens*, for *F. S. Collinge*, Colchester; *Doyle, Devonshire, & Co.*, for *Jones & Son*, Colchester.

[Reported by ERSKINE REID Barrister-at-Law.]

High Court—Chancery Division.

***Re* RADFORD. JONES *v.* RADFORD.** Peterson, J. 23rd and 30th April.

WILL—CONSTRUCTION—DEVISE ON TRUST FOR TESTATOR'S GRANDDAUGHTERS ON YOUNGER ATTAINING TWENTY-SEVEN—DEATH OF YOUNGER UNDER AGE OF TWENTY-SEVEN—VESTING.

A testator, after giving a certain specific bequest, gave all the rest of his property to his trustees in trust for his wife for life, and

after her death as to certain freeholds in trust for his granddaughters, Ethel and Dorothy, as tenants in common on the younger attaining the age of twenty-seven years, the income to be accumulated from the date of the death of the widow till the younger attained twenty-seven. The widow died in 1911, *and the younger daughter in* 1912, *under twenty-seven years of age. The elder granddaughter, not yet twenty-seven, and heiress at-law of her sister, now claimed the property.*

Held, following Boraston's case (1587, 3 *Rep.* 19*a*) *and a long line of cases following it, that the two granddaughters took vested interests on the death of the testator, expectant on the determination of the widow's life interest and the period of accumulation, and that they were accordingly absolutely entitled to the property and accumulations in equal shares.*

This was a summons to determine when a beneficiary took a vested interest in the following circumstances. The testator, after giving a certain specific bequest, gave all the rest of his property to his trustees to pay the income to his wife during her life, and after her decease upon trust (*inter alia*) as to certain freeholds for his granddaughters, Ethel and Dorothy, as tenants in common on the younger of them attaining twenty-seven years of age, the income from the date of the decease of the wife until the younger child shall attain twenty-seven to be accumulated for their benefit. The testator died in 1907, and his wife died in 1911, and Dorothy, his younger granddaughter, died in 1912, a spinster and intestate, and under the age of twenty-seven. The elder granddaughter, Ethel, who was also the heiress-at-law of her sister, but was still under twenty-seven years of age, now claimed the property.

PETERSON, J., after stating the facts, and referring to the following cases: *Boraston's case* (1587, 3 Rep. 19a), *Taylor* v. *Biddall* (1678, 3 Mod. 289), *Hook* v. *Taylor* (1706, 2 Vern. 561), *Parkin* v. *Knight* (1846, 15 Sim. 83), *James* v. *Lord Wynford* (1852, 1 Sm. & Giff. 40), *Phipps* v. *Ackers* (1842, 9 Cl. & F. 583), and other cases, said: Applying these cases, I hold that the two granddaughters take vested interests on the death of the testator expectant on the determination of the life interest of the widow and the period of accumulation. They are accordingly absolutely entitled in equal shares to the property and to the accumulations of the profits derived therefrom.—COUNSEL, *Guy Henderson; Welby King; G. H. Devonshire.* SOLICITORS, *C. M. Benwell; Grundy, Izod, & Co.*

[Reported by L. M. MAY, Barrister-at-Law.]

***Re* TATTERSALL'S SETTLEMENT. THE PUBLIC TRUSTEE *v.* TATTERSALL.** Peterson, J. 18th, 19th and 24th April.

REVENUE—SEPARATION DEED—DUTY—INCIDENCE—FINANCE ACT, 1894 (57 & 58 VICT. C. 30), S. 8, SUB-SECTION (4); S. 9, SUB-SECTION (1); S. 14, SUB-SECTION (1).

Where under a separation deed certain shares belonging to a wife were settled upon trust to pay the husband an annuity, and in the events which happened, other annuities, and in the further event, which happened, of the income becoming under a certain amount, on trust to reduce the husband's annuity in a certain manner.

Held, that on the death of the wife, the incidence of the estate duty payable on that event must be adjusted in accordance with section 8, *sub-section* (4); *section* 9, *sub-section* (1); *and section* 14, *sub-section* (1), *of the Finance Act,* 1894, *so as to throw the burden of the duty off the husband's annuity on to the interests in respect of which the claim for duty had arisen; so that when the charge for duty on the shares, the subject of the settlement, was removed by the sale of some of the shares to provide for payment of the duty, the interest on which the husband's annuity should be calculated was not the actual interest then received by the trustees, but the interest which would have been received but for this sale.*

This was a question as to the incidence of duty as between a husband and other persons interested in a charge. In 1911 under a separation deed certain shares belonging to a wife which had been transferred to the Public Trustee were settled upon trust to pay the husband during the joint lives of himself and his wife an annuity of £400 a year out of the income, and to pay the balance of the income to the wife during her life. After the death of the wife the income was to be applied in paying the annuity of £400 to the husband, an annuity not exceeding £300 to such relative as the wife should by will appoint during the joint lives of such relative and the only son of the marriage, a sum not exceeding £400 per annum during the son's minority for his maintenance, and a similar sum to be paid to him on his attaining twenty-one. During the remainder of the joint lives of the son and the husband, and subject as aforesaid, the income was to be paid to the husband during his life. After the death of the husband, and subject to the foregoing trusts, the shares were settled on trust for the son for life, and then for his children. The settlement provided that if in any year the total income received from the shares should be less than £1,250, the sum payable to the husband should in that year be reduced to a sum bearing the same proportion to the sum actually received by way of income as the sum of £400 bore to the sum of £1,300. The wife died in November, 1913, having by her will appointed an annuity of £300 to her sister. The Inland Revenue Commissioners decided that no benefit accrued to the husband by reason of the cesser of the wife's interest, and that the duty payable on her death was to be assessed on the value of the shares, less the value of such portion of the shares as would be sufficient to provide the husband's annuity. The amount of the estate duty was raised by a charge on the shares, but the Public Trustee intended to sell sufficient shares to clear off the charge. After the charge was paid off, the capital would be still further reduced and the income less than £1,250, and the question was as to the incidence of the duty thereon.

PETERSON, J., after stating the facts, said: By virtue of the Finance Act, 1894, section 8, sub-section (4); section 9, sub-section (1); and section 14, sub-ection (1), the husband is entitled as between himself and the other beneficiaries to throw the burden of the duties on to the interests in respect of which this claim to duty has arisen. While the charge remains, the husband will take the annuity to which he is entitled under the deed, having regard to the total income received by the Public Trustee, the interest on the charge being paid out of that portion of the income which, but for the charge, would go to the persons whose interests arose on the death of the wife. When the charge is paid off out of the proceeds of realisation of some of the shares, a similar principle should be applied, and I think that, for the purposes of adjusting the rights of the various persons interested, it would be fair that the interest which would have been payable if the charge were still subsisting should be added to the income actually received by the Public Trustee, and the husband would be entitled to receive an annuity determined in accordance with the provisions of the deed, on the basis that the aggregate thus ascertained represented the total income received by the Public Trustee.—COUNSEL, *H. S. Preston; R. W. Byrne; C. J. W. Farwell; A. M. Latter.* SOLICITORS, *Stow, Preston, & Lyttelton; Colyer & Colyer.*

[Reported by L. M. MAY, Barrister-at-Law.]

King's Bench Division.

YORKE *v.* YORKSHIRE INSURANCE CO. McCardie, J. 10th April.

LIFE INSURANCE—NON-DISCLOSURE OF MATERIAL FACTS—EVIDENCE AS TO MATERIALITY OF ILLNESSES—ADMISSIBILITY OF MEDICAL OPINION—COSTS—SEPARATE ISSUES—R.S.C., ORD. 65, RR. 1 AND 2.

In a proposal form for a life insurance policy it was asked: "What illnesses have you suffered?" The reply was, "None of consequence." In an action on the policy the jury found that the insured had in fact suffered from an illness of consequence, and judgment was entered for defendants, as there had been a substantial misstatement of fact. The defendants also pleaded other misstatements and non-disclosures, but the jury found against them, and in favour of the plaintiff.

Held, (1) *that medical evidence was admissible as to the materiality of illnesses;* (2) *that defendants were entitled to the costs of the action; and plaintiff was not entitled to costs under ord.* 65, *rr.* 1 *and* 2, *as succeeding upon separate issues on the findings in her favour.*

Action on a life insurance policy. The plaintiff was executrix of the assignee of a policy, dated 14th January, 1917, on the life of one Robert Smith. Smith died within three months from the date of the policy from an overdose of veronal. The defendants pleaded false statements and concealment of material facts. At the trial the jury answered certain questions (*inter alia*) as follows: 1. Had Smith suffered from any illness of consequence before 12th December, 1916?—Yes, in 1911. 2. Had he, before 12th December, 1916, been in the habit of taking veronal?—Occasionally, but there was not sufficient evidence of a habit. 3. If yes, was it material for the defendants to know that fact?—No answer. 4. Was Smith, on or before 12th December, 1916, of sober and temperate habits?—Yes. Other material facts are stated in the considered judgment below.

MCCARDIE, J., said: The policy provided that the proposal and declaration should form the basis of the contract, and the proposal contained, amongst others, the following questions: What illnesses have you suffered?—Answer: None of consequence. Do you ordinarily enjoy good health?—Answer: Yes. Are you now, and have you always been, of sober and temperate habits?—Answer: Yes. The proposer made a declaration as to the truth of these answers. The defence relied on two main points: (*a*) That the answers were untrue, and (*b*) that Smith had failed to disclose that he suffered from heart trouble and from insomnia, and that he was addicted to veronal. The effect of the answers was to negative the defendant's pleas with respect to insomnia, to the use of veronal, and to heart trouble. His lordship remarked that amongst the answers was one that Smith was of sober and temperate habits, whereas the defendants alleged that he had the veronal habit. The words "sober and temperate" must receive the ordinary interpretation, *i.e.*, as to the use of alcohol, and not of drugs. If insurance companies required special information in their proposal forms as to drugs, they should add a further question, otherwise they must rely on the ordinary rule requiring the disclosure of all material facts known to the proposer which might lead the insurer to refuse the risk or to demand a higher premium. The defendants claimed judgment on the answer that Smith had had no illness of consequence, notwithstanding his statement in the proposal form. The plaintiff had contended that the answer to the question in the proposal relating to illness was only intended as the insured's opinion as to the character of any of his illnesses, and that the question was obscurely framed. But the jury were entitled to form a view of the matter, and had found that Smith had had an illness of consequence. The proposal form, therefore, contained a statement substantially incorrect; the warranty of truth was broken, the policy became void, and there must be judgment for the defendants. Questions had been put to doctors called for

the defendants as to the materiality of knowledge to an insurance company of the habits, character and illnesses of a proposer; and these questions had been objected to by the plaintiff as involving answers which were for the jury. His lordship had ruled the evidence to be admissible. No sound distinction, he thought, could be drawn between marine insurances and life, fire or other heads of insurance business. True, the expert evidence in marine insurance cases was given usually by those actually engaged in the occupation or business; but in questions of life insurance the matters at issue were usually physiological, medical, or neuropathic, and the directors of life insurance companies were but rarely medical men; they seldom, if at all, personally saw the proposer, and they relied to a great extent on the reports and advice of medical men who alone could appreciate the importance of what should be disclosed. As to costs, there was the broad fact that the defendants had failed upon a number of points raised by them. Was there a case of separate issues under ord. 65, rr. 1 and 2, so as to deprive them of costs on those issues? This question as to separate issues needed clear formulation by the Court of Appeal, but he had come to the conclusion, from the cases, that all the questions left to the jury went to the validity of the policy, and were not separate and independent matters, but branches of one head of reference, namely, that the policy was avoided by misstatement and non-disclosure. As the defendants had proved a substantial misstatement, they succeeded on the issue raised in the case, and none the less so because they failed to prove other misstatements alleged by them. The judgment would be entered for the defendants with costs.—COUNSEL, *Tindal Atkinson*, K.C., and *T. E. Haydon*, for the plaintiff; *Sir Ernest Pollock*, K.C., and *Shakespeare*, for the defendants. SOLICITORS, *Penman & Brown*, for *T. Dodds*, Newcastle; *Gray & Dodsworth*.

[Reported by G. H. KNOTT, Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

BOULTON *v.* BOULTON. Horridge, J. 22nd April.

DIVORCE—HUSBAND'S SUIT FOR ADULTERY—NON-ACCESS—EVIDENCE BY AFFIDAVIT.

In a husband's suit for divorce on the ground of his wife's adultery, where there has been birth of a child, and evidence is allowed to be given by affidavit, this may include evidence of non-access.

This was a husband's suit for divorce on the ground of his wife's adultery with a man unknown while the husband was serving with the Army abroad. Leave had been given for the petitioner's evidence to be given by affidavit, save as to the issue of adultery, and from this it appeared that, having been married on 20th April, 1910, the petitioner joined the Army on 8th August, 1914, and was away from England with the 2/5th Hampshire Regiment from 12th December, 1914, until 11th July, 1917, during which period he did not see his wife. She, however, on 16th March, 1916 gave birth to a child of which he was not the father. Counsel having called evidence as to the actual birth of the respondent's child,

HORRIDGE, J., pronounced a decree *nisi*.—COUNSEL, *G. Tyndale*. SOLICITOR, *A. L. Gaskell*.

[NOTE.—Horridge, J., in a recent case, had refused to allow evidence of non-access by a husband petitioner to be given on affidavit, on the ground that it was evidence of the adultery charged, and therefore was contrary to *Gayer* v. *Gayer* (1917, p. 64), decided in Court of Appeal.]

[Reported by C. G. TALBOT-PONSONBY, Barrister-at-Law.]

New Orders, &c.

War Orders and Proclamations, &c.

The *London Gazette* of 7th June contains the following:—

1. An Order of the Central Control Board (Liquor Traffic) for the West Norfolk Area, dated 6th June, defining the hours of sale and containing other usual provisions as to treating, credit, &c.; and the usual Supplemental Order for the same with reference to medicated wines and new Excise licences.

2. The like Orders for the Lincoln Area.

3. Admiralty Notices to Mariners relating to (1) England, South Coast: (i) Falmouth Harbour Approach—Traffic Regulations; (ii) Penzance Bay—Traffic Regulations. (2) England, South Coast: Tor Bay Approaches—Traffic Regulations. (3) England, South-east Coast: Dover Channel—Traffic Regulations. (4) Scotland, North-east Coast, with Orkney and Shetland Isles: All traffic of neutral vessels with the Shetland Isles is prohibited. (5) Scotland, West Coast—Firth of Clyde, Isle of Arran: Lamlash Harbour Entrances—Traffic Regulations. (6) Irish Channel: Rathlin Sound—Closed to Traffic. (7) Ireland, East Coast: Belfast Lough—Traffic Regulations. (8) English Channel, North Sea Southern Portion, with Rivers Thames and Medway and Approaches. (9) England, East Coast: Sheerness and Chatham—Traffic Regulations.

The *London Gazette* of 11th June contains the following:—

4. An Order in Council, dated 11th June, further amending the Proclamation dated 10th May, 1917, and made under section 8 of the Customs and Inland Revenue Act, 1879, and section 1 of the Exportation of Arms Act, 1900, and section 1 of the Customs (Exportation Prohibition) Act, 1914, whereby the exportation from the United Kingdom of certain articles to certain or all destinations was prohibited. Various chemicals and other articles are added to class (A), the export to all destinations being thereby prohibited.

5. A Foreign Office (Foreign Trade Dept.) Notice, dated 11th June that certain additions and corrections have been made to the list of persons and bodies of persons to whom articles to be exported to China may be consigned.

6. An Admiralty Notice to Mariners: England, South-east Coast: Folkestone Approach—Prohibited Area.

Orders in Council.

REGISTRY OF GOVERNMENT SHIPS.

[Recitals.]

It is hereby ordered that the following Regulations shall have effect as regards any Government Ships in the Service of the War Department.

1. An application for registry of a Government Ship in the service of the War Department shall be made in writing under the hand of the Secretary of the War Office. Such application shall contain the following particulars:—

(1) A statement of the name and description of the Ship.

(2) A statement of the time when, and place where, the Ship was built; or, if the Ship was foreign built, and the time and place of building are unknown, a statement to that effect, and of her foreign name.

(3) A statement of the nature of the title to the said Ship, whether by original construction by or for the War Department, or by purchase, capture, condemnation, or otherwise, and a list of the documents of title, if any, in case she was not originally constructed by or for the War Department.

(4) A statement of the name of the Master.

4. Upon the transfer of a registered Government Ship in the service of the War Department by Bill of Sale the War Department shall be the transferor, and the Bill of Sale shall be in Form A. in the proper form prescribed under the Principal Act, omitting the covenant therein contained. Any such Bill of Sale shall be signed by the Secretary of the War Office on behalf of the War Department.

7. Government Ships in the service of the War Department registered in pursuance of the provisions of this Order in Council are hereby excluded from the category of Ships belonging to His Majesty within the meaning of Sections 557 to 564 of the Principal Act.

8. Where any Section of the Merchant Shipping Acts which, by virtue of the Merchant Shipping Act, 1906, and this Order in Council, is applicable to Government Ships in the service of the War Department imposes any duty or liability or confers any right or power upon or contemplates any act being performed by the owner of a Ship such duty, liability, right or power shall, subject always to the other provisions of this Order in Council, be carried out, borne, or exercised by the War Department on behalf of His Majesty.

10. Section 1 and Sections 8 to 12 of the Merchant Shipping Act, 1894, shall not apply to Government Ships in the service of the War Department registered in pursuance of the provisions of this Order in Council. Provided always that no provision of the Merchant Shipping Acts which, according to a reasonable construction, would not apply in the case of Government Ships in the service of the War Department shall be deemed to apply to such Ships by reason only that its application is not hereby expressly excluded.

4th June. [*Gazette*, 4th June.

THE AIR FORCE ACT (STATUTORY AMENDMENTS) ORDER, 1918.

[Recital of section 12 (3) of the Air Force (Constitution) Act, 1917, &c.]

1. The modifications set forth in Part I. of the Schedule to this Order are necessary for adapting to the Air Force the amendments in the Army Act made by the Army (Annual) Act, 1918, and accordingly the amendments set forth in Part 2 of the Schedule to this Order shall be made in the Air Force Act.

2. The said amendments to the Air Force Act shall take effect, and shall be deemed to have taken effect:—

(*a*) in the United Kingdom, Channel Islands, and the Isle of Man as from the 30th day of April, 1918; and

(*b*) elsewhere whether within or without His Majesty's Dominions as from the 31st day of July, 1918:

Provided that the amendments to sections 133 and 163 of the Air Force Act shall take effect, and shall be deemed to have taken effect, as from the said 30th day of April, 1918, both within the British Islands and elsewhere.

3. This Order may be cited as the Air Force Act (Statutory Amendments) Order, 1918.

4th June.

Schedule of amendments to the Army Act, including the following:—

PART II.

1. The following sub-section shall be added at the end of section 108A:—

"(7) The provisions of this Act as to billeting shall, whilst any Order of His Majesty under this section is in force, apply to women who are enrolled for employment by the Air Council as they apply to airmen; and for the purpose of these provisions as so applied officers of any body of the Air Force with whom the women to be billeted are employed, and the officer commanding that body, shall be deemed in relation to such women to be their officers and commanding officer; and if any such woman is guilty of an offence in relation to billeting mentioned in section 30 of this Act she shall be punishable on summary conviction in manner provided by sub-section (2) of section 111 of this Act."

[*Gazette*, 7th June.

NEW DEFENCE OF THE REALM REGULATIONS.

[Recitals.]

Dealings in War Material, &c.

1. Regulation 2E shall be amended by the insertion therein after the word "sale" of the word "repair," and by the insertion therein after the words "the sale" and the words "to sell," wherever those words occur, of the words "or repair."

Permission for Embarkation.

2. In Regulation 14G for the words "If any person acts in contravention of this regulation he shall be guilty of a summary offence against these regulations," there shall be substituted the following provisions:—

"(2) A Secretary of State may by order from time to time prescribe the ports at which persons proceeding as passengers from Great Britain to Ireland or from Ireland to Great Britain may embark and the routes by which they may travel, and where such an order is made, then, subject to any exceptions provided by or under the order, no person, other than as aforesaid, shall, when proceeding as a passenger from Great Britain to Ireland or from Ireland to Great Britain, embark at any port other than a port so prescribed or travel by a route other than a route so prescribed.

"(3) If any person acts in contravention of this regulation he shall be guilty of a summary offence against these regulations, and where a person embarks at a port in contravention of this regulation the master of the vessel on which he embarks shall, unless he proves to the contrary, be deemed to have aided and abetted the offence."

Control of Shipping.

3. Rgulation 37 shall be amended by the insertion therein after the word "coast" of the words "or in controlling or directing the movements of merchant shipping."

Assisting Absentee Soldiers.

4. After Regulation 43A the following regulation shall be inserted:—

"43B. If any person procures or persuades a soldier to absent himself without leave, or knowingly aids or assists a soldier to absent himself without leave, or knowingly conceals an absentee without leave or aids or assists him in concealing himself, or aids or assists in his rescue, that person shall be guilty of a summary offence against these regulations, and for the purpose of this provision shall be deemed to have had knowledge unless he proves that he had not knowledge:

"Provided that this regulation shall not apply in any area in which Regulation 42AA applies."

7th June. [*Gazette*, 7th June.

Admiralty Orders.

CHARTS AND HYDROGRAPHIC PUBLICATIONS.

1. No person unless he has first obtained a permit from the Hydrographer of the Navy and complied with the conditions subject to which the permit has been granted, shall transmit, consign or convey from the United Kingdom to any destination, any chart or hydrographic publication.

2. The following classes of publication are included in the term "hydrographic publication":—

(*a*) All books of sailing directions or handbooks relating to seaports.

(*b*) All tide tables, light lists, nautical almanacs and navigation tables.

(*c*) Works on or relating to navigation.

8th June, 1918.

NOTICE.—Applications for permits under the above Order should be addressed to the Hydrographer of the Navy, Admiralty, London, SW. 1. [*Gazette*, 11th June.

Army Council Orders.

THE OFFICERS' BUTTONS ORDER, 1918.

1. No person shall manufacture or cause to be manufactured any Officers' buttons otherwise than in such manner as to conform to the War Office Sealed Patterns in the case of each button respectively.

7. This Order may be cited as the Officers' Buttons Order, 1918.

28th May. [*Gazette*, 11th June.

KIPS AND CALF SKINS (GREAT BRITAIN) ORDER, 1918.

(1) No Kips or Calf Skins taken off in Great Britain shall be bought by or on behalf of any person without a permit issued by or on behalf of the Director of Raw Materials, or at prices other than those set out in the Schedule hereto annexed, or at such other prices as in any particular case shall be authorized by or on behalf of the Director of Raw Materials.

(2) No Leather to be produced from Kips or Calf Skins taken off in Great Britain shall be bought by or on behalf of any person without a permit issued by or on behalf of the Director of Raw Materials, or at prices other than those which may be authorized in any particular case by or on behalf of the Director of Raw Materials.

(3) *Furnishing of Particulars.*]

(6) This Order may be cited as the Kips and Calf Skins (Great Britain) Order, 1918.

4th June. [*Gazette*, 7th June.

[*Schedule of Prices.*]

DRUGS FOR THE TROOPS.

Whereas by an Order dated the 11th day of May, 1916, the Army Council, under the powers conferred upon them by the Defence of the Realm Regulations, prohibited the sale or supply of certain drugs to or for any member of His Majesty's Forces except subject to certain conditions. Now the Army Council, in pursuance of the said powers and all other powers them thereunto enabling, hereby revoke the said Order of the 11th day of May, 1916, and Order as follows:—

No person shall sell, give, procure, or supply or offer to sell, give, procure, or supply any of the drugs specified in the Schedule to this Order (hereinafter called the drug) to any member of His Majesty's Forces not being a registered medical practitioner or registered dentist or registered veterinary surgeon except in accordance with the following conditions:—

(a) The drug must be supplied on and in accordance with a written prescription of a registered medical practitioner or registered dentist or registered veterinary surgeon, and dispensed by a person legally authorized to dispense such prescription.

(b) The prescription must be dated and signed by the registered medical practitioner or registered dentist or registered veterinary surgeon with his full name and address and qualifications, and marked with the words "not to be repeated," and must specify the total amount of the drug to be supplied on the prescription, except that where the medicine to be supplied on the prescription is a proprietary medicine, it shall be sufficient to state the amount of the medicine to be supplied.

(c) The drug shall not be supplied more than once on the same prescription.

(d) The prescription shall be marked with the date on which it is dispensed and shall be retained by the person, firm or body corporate by whom the prescription is dispensed, and shall be kept on the premises where it is dispensed, and shall be open to inspection by any person authorized for the purpose by a Secretary of State.

(e) The ingredients of every prescription so dispensed, with the name and address of the person to whom they are sold or delivered, shall be entered in a book specially set apart for this sole purpose, and kept on the premises where the prescription is dispensed, which book shall be open to inspection by any person authorized for the purpose by a Secretary of State.

5th June.

NOTE.—This Order does not supersede or modify the requirements of Defence of the Realm Regulation 40B in regard to opium or cocaine and those requirements must also be complied with.

But entries of sales of cocaine to or for members of His Majesty's Forces may be made in the cocaine books required to be kept under Defence of the Realm Regulation 40B provided the entries aforesaid are distinctively marked therein.

5th June.

Schedule.

Barbitone; Benzamine Lactate; Benzamine Hydrochloride; Chloral Hydrate; Coca; Cocaine; Codeine; Diamorphine; Indian Hemp; Opium; Morphine; Sulphonal and its Homologues; and any salts, preparations, derivatives or admixtures prepared from or with any of the above-mentioned drugs.

[*Gazette*, 7th June.

Board of Trade Orders.

THE PLATINUM MINES ORDER, 1918.

1. Regulation 30BB of the Defence of the Realm Regulations is hereby applied to mines from which any ores of platinum are extracted.

2. This Order may be cited as the Platinum Mines Order, 1918.

4th June. [*Gazette*, 7th June.

THE PAPER-MAKING MATERIALS (HOME-PRODUCED) ORDER, No. 2, 1918.

1. *Definition.*]

2. No person shall buy or offer to buy any paper-making material produced or collected in the United Kingdom except under and in accordance with the terms of a permit granted by the Controller of Paper.

3. No person shall sell or offer for sale any paper-making material produced or collected in the United Kingdom except to the holder of and in accordance with the terms of such a permit as aforesaid.

4 and 5. *Amount of Supplies.*]

* * * *

12. The Paper-Making (Home Produced) Order, 1918, dated 13th March, 1918, is hereby revoked without prejudice to any matter or thing done or suffered or penalty incurred or proceeding instituted thereunder.

13. *Infringements.*]

14. This Order may be cited as the Paper Making Materials (Home-Produced) Order, No. 2, 1918.

4th June. [*Gazette*, 7th June.

THE ROAD TRANSPORT ORDER, 1918.

1. All persons owning or having in their possession or under their control any horse or vehicle which is used for the transport of goods by road (except as is hereinafter mentioned) shall on or before the 31st day of July, 1918, or by such later date as the Road Transport Board may by notice allow either generally or in the case of any particular area or areas, make a return in respect of such horse or vehicle in the form set out in the schedule to this Order.

2. Such return as is referred to in the last preceding paragraph shall be sent to the Secretary of the Road Transport Committee for the Area in which the horse or vehicle is usually kept,* and shall be signed by the person making such return.

3. Any person who has made a return under the provision of paragraph 1 of this Order shall before disposing of any horse or vehicle referred to in such return or before allowing such horse or vehicle to pass out of his possession or control give notice in writing to the Secretary of the Road Transport Committee for the Area in which the horse or vehicle is registered.

4. On and after the 1st day of September, 1918, no person shall use any horse or vehicle (except as is hereinafter mentioned) which is being used for the transport of goods by road except under and in accordance with the terms of a permit granted by the Road Transport Board on behalf of the Board of Trade.

5. Nothing in this Order applies to horses or vehicles used wholly or mainly in agriculture or to horse-drawn vehicles having a load capacity of less than 15 cwt.

6. *Infringements.*]

7. This Order may be cited as the Road Transport Order, 1918.

4th June.

[Form of Return.]

* The address of the Secretary of the appropriate Area Road Transport Committee will be indicated on the form of return.

[*Gazette*, 7th June.

THE HAY AND STRAW ORDER, 1918.

1. No person shall, without the permission in writing of the Controller of Horse Transport, feed any horse or permit any horse to be fed with hay, straw or chaff made from hay or straw, except as provided in this Order.

2. This Order shall not apply to horses falling within the classes mentioned in the first Schedule.

3. Horses falling within the classes mentioned in the second Schedule may not on any day be fed with more than the quantity of hay, straw or chaff made from hay or straw, prescribed for such horses.

4. Any person in possession of a horse or horses falling within the second Schedule shall keep a record in writing showing (1) the number and class of horses kept by him; (2) the total maximum daily ration authorized by this Order; (3) the description and quantity of hay, straw and chaff fed to such horses each week; (4) the description and quantity of all hay and straw purchased by him, and the date of such purchase. Such records shall at all reasonable times be open to the inspection of an Officer of Police or any person authorized by the Controller of Horse Transport.

5. No straw shall be used for the purpose of bedding horses.

6. In this Order "horse" includes a mare, gelding, colt, filly, pony, mule and ass; "hay" includes clover.

7. This Order shall come into effect on 17th June, 1918.

8. Infringements of this Order are summary offences against the Defence of the Realm Regulations.

9. This Order may be cited as the Hay and Straw Order, 1918, and shall not apply to Ireland.

7th June.

Schedule I.

Horses excluded from the operation of this Order:—

(*a*) Horses in the possession of the Army Council,, the Admiralty, or the Air Board, or exclusively used for the purposes of the Army Council, the Admiralty or the Air Board.

(*b*) Horses maintained and used exclusively for agricultural purposes.

(*c*) Stallions used exclusively for stud purposes, brood mares, weaned foals and yearlings.

Schedule II.

Class of Horse and Maximum Daily Ration of Hay and Straw Chaff.	lbs.
(*a*) Heavy dray and cart horses and trotting vanners ...	16
(*b*) Light draught horses and light trotting vanners ...	14
(*c*) Other light horses and cobs	9
(*d*) Ponies 14 hands and under	7
(*e*) Racehorses registered with the Controller or Horse Transport for the purposes of the limited racing scheme	8

NOTE.—Correspondence with respect to this Order should be addressed to The Controller of Horse Transport, 7, Whitehall Gardens, S.W. 1.

[*Gazette*, 11th June.

Ministry of Munitions Orders.

NOTICE OF GENERAL LICENCE UNDER THE SMALL TOOLS ORDER, 1916.

The Minister of Munitions gives notice that as from the date hereof he hereby authorizes every person, until further notice, to manufacture for his own use, but for no other purpose, all or any of the Small Tools referred to in the above Order.

31st May. [*Gazette*, 31st May.

THE COMPOUND FERTILISERS ORDER, 1916.

1. This Order shall take effect as on and from the 5th June, 1916.

2. For the purpose of this Order and the Schedules hereto, the following expressions shall have the following meanings:—

"Potash" shall mean compounds of Potassium calculated as Potassium Oxide soluble by the methods prescribed by the Fertiliser and Feeding Stuffs (Method of Analysis) Regulations, 1906.

"Compound Fertiliser" shall mean any fertiliser, or substance intended or sold for use as a fertiliser (however described or named) which is manufactured or made by mixing or compounding together, artificially, any two or more separate substances. Provided that the product obtained by treating with sulphuric acid, or any similar reagent, a single substance containing nitrogen phosphates and potash, or any one or more of such constituents,

shall not be regarded as a compound fertiliser for the purposes of this Order.

"Unit" shall mean 1 per cent. by weight in 1 ton of Fertiliser.

"Maker of Compound Fertilisers" shall mean a Mixer or Compounder of any Compound Fertiliser as above defined.

3.-7. *Maximum Prices.*]

8. As on and from the date on which this Order takes effect no person shall sell or purchase or offer to sell or purchase any Compound Fertiliser at a price exceeding that prescribed by this Order as the maximum price (having regard to quantity, composition, packages, date for and terms of delivery) for such sale. Provided that—

(a) A Vendor of Compound Fertiliser shall not be liable to conviction for selling at a price in excess of the maximum price prescribed by this Order if the invoice given to the purchaser, as required by clause 9 of this Order, states accurately within the limits of error allowed by that clause the percentages of the different constituents therein referred to contained in the Compound Fertiliser sold and the price charged and stated on such invoice does not exceed the correct maximum price on the basis that the percentages stated in such invoice are correct; and

(b) A Purchaser of Compound Fertiliser shall not be liable to conviction for purchasing at a price exceeding the maximum price unless the price agreed to be paid by him is to his knowledge in excess of the maximum price authorized for such purchase.

9. *Invoices.*]

10. *Exceptions.*]

11. As on and from the 1st July, 1918, no person shall manufacture or produce any Compound Fertiliser, nor shall any maker of Compound Fertiliser sell any such Fertiliser, except under a licence issued by or under the authority of the Minister of Munitions, and in accordance with any terms and conditions of such licence.

12. *Returns.*]

13. None of the foregoing provisions or restrictions of this Order shall apply to a sale, by a maker to a consumer, of two or more Fertilisers or substances, neither of which is by itself a Compound Fertiliser as defined by this Order, notwithstanding that it is one of the terms of the purchase that the Fertilisers or substances purchased are to be artificially mixed or compounded together by the maker before delivery, provided that such Fertilisers or substances are sold separately by description as such, and that an invoice is given to the consumer on or before or as soon as possible after delivery which states the quantity and price of each of the Fertilisers or substances included in the mixture or compound as delivered, and the charge made for mixing or compounding, bags and bagging.

14. This Order and the Fertilisers and Feeding Stuffs Act, 1906, shall operate and have effect independently of one another, and nothing contained in this Order shall be held to exempt any person from compliance with any of the provisions or requirements of such Act, or any Regulations made thereunder, applicable to sales or purchases of Compound Fertilisers; nor shall any of the provisions of the said Act or Regulations be held to govern or affect any of the requirements or provisions of this Order, or any proceedings instituted in respect of any breach thereof.

15. This Order supersedes the Orders relating to Compound Fertilisers made by the Minister of Munitions on the 13th October, 1917, and the 14th November, 1917, excepting only as regards sales or purchases of Compound Fertilisers made before or after the date of this Order for delivery before the 1st June, 1918.

16. This Order may be cited as "The Compound Fertilisers Order, 1918."

NOTE.—All applications in reference to this Order should be addressed to the Director of Acid Supplies, Ministry of Munitions, Department of Explosives Supply, Storey's Gate, Westminster, S.W. 1.

4th June.

[Schedules of (1) unit rates of Nitrogen, Phosphates and Potash for the purpose of the above Order, and (2) limits of error referred to in Clauses 8 and 9 of the above Order.]

[*Gazette*, 4th June.

COPPER SULPHATE (AMENDMENT) ORDER, 1918.

1. The maximum prices fixed by the Copper Sulphate Order, 1918, shall not apply to any sale or purchase effected after the date of this Order of Copper Sulphate guaranteed in writing by the Vendor to be specially purified and to contain a specified percentage of Copper Sulphate, not being less than 99 per cent.

2. *Maximum prices.*]

3. This Order may be cited as the Copper Sulphate (Amendment) Order, 1918.

NOTE.—All applications in reference to this Order should be addressed to the Director of Acid Supplies, Ministry of Munitions, Department of Explosives Supply, Storey's Gate, S.W. 1, and marked "Copper Sulphate."

4th June. [*Gazette*, 4th June.

Food Orders.

THE SUGAR (RESTRICTION) ORDER, 1918.

1. *Restriction on use of sugar for manufacturing purposes.*]—No person shall, during any of the periods hereinafter referred to, use in the manufacture of articles which belong to any one of the classes mentioned in the first schedule and which are manufactured by him for sale more sugar than the amount permitted for such period.

2. *Datum period.*]—The permitted amount shall be ascertained as respects each class of article by reference to the total amount of sugar used in the year 1915 for that class of article by the person in question or, in the case where there has been a transfer of a continuing business in or since the year 1915, by such person and his predecessors in business. The permitted amount for each period shall be such percentage as the Food Controller may from time to time prescribe by notice under this Order and until further notice shall be the percentage of such total amount shown for that period in the following table:—

Percentage of total sugar used in 1915.	*Period to which such percentage is applicable.*
6¼ per cent.	1st June, 1918, to 31st Aug., 1918.
12½ ,,	,, ,, ,, to 30th Nov., 1918.
18¾ ,,	,, ,, ,, to 28th Feb., 1919.
25 ,,	,, ,, ,, to 31st May, 1919.

Provided that there shall be excluded from such total amount any sugar remaining in stock on the 1st June, 1918, which might lawfully have been used since the 1st June, 1917, by the person in question pursuant to the provisions of the Sugar (Restriction) Order, 1917, as subsequently amended.

3. *Exception.*]—This Order shall not apply to the use of sugar in the manufacture of jam or marmalade or condensed milk, or in the manufacture of beer by a brewer for sale.

4. *Register to be kept.*]

5. *Inspection of Register.*]

6. *Prohibitions under other orders.*]—Nothing in this Order shall be deemed to permit the use of sugar in any manufacture prohibited by any Order made or to be made by lawful authority.

7. *Penalty.*]

8. *Interpretation.*]—The expressions "Beer" and "Brewer for sale" have the same meaning as in the Customs and Inland Revenue Act, 1885.

9. *Title.*]—This Order may be cited as the Sugar (Restriction) Order, 1918.

FIRST SCHEDULE.
Classes of Manufacture.

A. Drugs and Medicinal Preparations.
B. Sugar Confectionery and Chocolate.
C. Pastries.
D. Biscuits.
E. Candied Peel and Preserved and Crystallised Fruits.
F. Mineral Waters.
G. Other beverages (except beer and stout).
H. Any other manufactures for human consumption (except jam, condensed milk and marmalade).
K. Any manufactures not for human consumption.

SECOND SCHEDULE.
[Form of Register.]

13th May.

THE FISH (PRICES) ORDER, No. 2, 1918 [*ante*, p. 474.], AS AMENDED.

1 *General restrictions.*]—(a) A person shall not on or after the 27th May, 1918, sell or offer or expose for sale, or buy or offer to buy any fish at prices exceeding the maximum prices for the time being applicable under this Order.

(b) Until further notice the maximum price for the fish specified in the first three schedules to this Order shall be at the rates applicable according to such schedules, and the subsequent provisions of this Order.

(c) The Food Controller may from time to time by notice prescribe further or other prices for fish whether or not specified in the first three schedules to this Order.

* * *

9. *Powers of a Food Committee.*]—A Food Committee may from time to time by resolution vary the maximum retail prices for fish sold fixed for the time being by the Food Controller but

(a) Every such resolution shall be reported to the Food Controller

within seven days, and in the case of a resolution increasing the maximum price shall not take effect until the same has been sanctioned by the Food Controller; and

(*b*) Every resolution made by the Food Committee under this clause shall be subject at any time to review by the Food Controller and shall be withdrawn or varied as he shall direct.

* * *

13. *Contracts.*]—Where the Food Controller is of opinion that under any contract subsisting on the 25th March, 1918, fish cannot be sold at a reasonable profit by reason of the maximum prices fixed by this Order, the Food Controller may, if he thinks fit, cancel such contract or modify the terms thereof in such manner as shall appear to him to be just.

14. *Fictitious transactions.*]—No person shall, in connection with the sale or proposed sale or disposition of fish, enter or offer to enter into any unreasonable or artificial transaction.

* * *

16. *Exceptions.*]—This Order shall not apply to sales of cooked fish by a person in the ordinary course of his trade.

17. *Revocation.*]—The Fish (Prices) Order, 1918, is hereby revoked as on the 25th March, 1918, without prejudice to any proceedings in respect of any contravention thereof.

* * *

19. *Title and Commencement.*]—This Order may be cited as the Fish (Prices) Order, No. 2, 1918.

14th March.

Amended 14th May.

[Schedule of Maximum Prices.]

BRITISH CHEESE ORDER, 1917.

Notice.

Pursuant to the powers reserved to him by Clause 2 of the above-mentioned Order as amended, the Food Controller hereby prescribes the prices set out in the Schedule as the maximum first hand prices upon all sales made on and after the 18th May, 1918, of cheese as described in the Schedule.

14th May.

[Schedule of Prices.]

THE PUBLIC MEALS ORDER, 1918 (AMENDMENT).

In exercise of the powers conferred upon him by the Defence of the Realm Regulations the Food Controller hereby orders that Clause 2 of the Public Meals Order, 1918, shall hereafter cease to apply to any Public Eating place in Great Britain but without prejudice to any proceedings in respect of any previous contravention thereof.

16th May.

THE RICE (RETAIL PRICES) AMENDMENT ORDER, 1918.

In exercise of the powers conferred upon him by the Defence of the Realm Regulations and of all other powers enabling him in that behalf, the Food Controller hereby orders that the Rice (Retail Prices) Order, 1918 (hereinafter called the Principal Order), shall be amended as follows:—

1. The first paragraph of Clause 1 (*a*) of the Principal Order is hereby revoked as from the 1st June, 1918, and the following paragraph substituted:—

"No rice shall be sold by retail at a price exceeding the rate of 4d. per lb. No ground rice, rice flour, flaked rice or other similar rice product shall be sold by retail at a rate exceeding 4½d. per lb., except that where such article is of a proprietary brand and is packed in cartons it may be sold at a rate not exceeding 5½d. per lb."

3. This Order may be cited as the Rice (Retail Prices) Amendment Order, 1918.

16th May.

THE FOOD HOARDING ORDER, 1917; THE FOOD CONTROL COMMITTEES (LOCAL DISTRIBUTION) ORDER, 1917; THE FOOD CONTROL COMMITTEES (LOCAL DISTRIBUTION) AMENDMENT ORDER, 1918; AND THE LONDON AND HOME COUNTIES (RATIONING SCHEME) ORDER, 1918.

Authorization.

Notwithstanding the provisions of any of the above Orders, and of any schemes adopted with the consent of the Food Controller under any of such Orders, the Food Controller hereby grants the following authority to all persons concerned:—

1. Farmers' butter for home preservation may be acquired by any person subject to compliance with the following conditions:—

(*a*) Notice of the amount intended to be acquired and preserved shall be sent to the Food Control Committee for the district within which he usually resides, together with a true statement of such particulars as may be required by the Committee;

(*b*) The amount of butter preserved shall not exceed the amount stated in the notice or, if objection is taken by the Committee to the amount stated, the amount (if any) permitted by the Committee;

(*c*) A certificate in the form prescribed under the authority of the Food Controller shall be given by him to the supplier;

(*d*) The butter shall be properly salted or otherwise preserved by him; and

(*e*) The butter shall not be consumed or disposed of except at such times and subject to such conditions as may be prescribed by or under the authority of the Food Controller.

2. Subject to the receipt, and production; when required by a Food Committee, of the certificate mentioned in Clause 1 (*c*), farmers' butter may be supplied up to the amount mentioned in the certificate: Provided that no supply shall be made by any person under this authority so as to interfere with the supply by him to his registered customers of their full ration.

17th May.

THE EARLY POTATOES (PRICES) ORDER, 1918.

1. *Maximum Prices.*]—No person shall between the 20th May, 1918, and the 31st July, 1918, inclusive, sell or offer or expose for sale, and no person shall buy or offer to buy any potatoes of the 1918 crop at prices exceeding the maximum prices applicable under the Schedule to this Order.

4. *Fictitious Transactions.*]—No person shall in connection with the sale or disposal or proposed sale or disposal of any potatoes to which this Order applies enter or offer to enter into any fictitious or artificial transaction or make or demand any unreasonable charge.

5. *Exceptions.*]

6. This Order shall not apply to Ireland.

7. *Infringements.*]

8. *Title.*]—This Order may be cited as the Early Potatoes (Prices) Order, 1918.

21st May.

The Schedule.

Period for which Maximum Price applies.

	Maximum Price per lb.
For deliveries between—	
From 20th May, 1918, to 31st May, 1918 ...	... 4d.
From 1st June, 1918, to 15th June, 1918 ...	... 3½d.
From 16th June, 1918, to 30th June, 1918 ...	... 3d.
From 1st July, 1918, to 15th July, 1918 ...	... 2½d.
From 16th July, 1918, to 31st July, 1918 ...	... 2d.

All dates inclusive.

Societies.

Solicitors' Benevolent Association.

The directors of this association held their monthly meeting at the Law Society on the 12th inst., Mr. L. W. North Hickley in the chair, the other directors present being Messrs. F. E. F. Barham, E. R. Cook, T. S. Curtis, A. Davenport, T. Dixon (Chelmsford), W. E. Gillett, C. Goddard, J. R. B. Gregory, G. P. Hinds (Goudhurst), C. G. May, R. C. Nesbitt, R. W. Poole, J. F. Rowlatt, W. A. Sharpe, M. A. Tweedie, and W. M. Walters.

Grants to the amount of £611 were made in poor and deserving cases, seven new members were admitted, and other general business transacted.

Law Students' Journal

Calls to the Bar.

The list of gentlemen called to the Bar on Wednesday night includes the following:—

LINCOLN'S INN.—W. J. Williams, B.A., Lond.

INNER TEMPLE.—H. B. Hazeltine, M.A., LL.B., LL.D., Litt. D. Camb., Brown and Harvard; H. M. Bullock, B.A., Camb.; Major W. A. Adam, M.A., Dublin; A. D. Hamlyn, Lond.; C. H. Samuel, B.A., Camb.; L. F. O. S. Honey; F. Ince Jones, B.Sc., Lond.; J. A. Pugh, B.A., Oxford; J. Watkins-Evans, B.A., Camb.; Colonel H. W. G. Graham; G. A. McGusty, M.A., Dublin.

MIDDLE TEMPLE.—S. W. Dowling; F. B. Turner, B.A., LL.B. (Manchester), Capt., Lanc. Fus.; C. G. Hancock, B.A. (Oxford), Lieut., Middlesex R.; J. C. Harrison, Capt., R.A.F.; T. R. St. Johnston, Capt., R.A.M.C.; C. W. D. Miller, Sec. Lieut., R.G.A.; W. T. Stanton, B.A. (Ireland); H. E. Kingdon; R. F. Levy, LL.B. (London), Lieut., A. P. and S. S.; L. Packer, LL.B. (W.R.U.), member of the Bar of the Supreme Court of the United States.

GRAY'S INN.—J. Becke, Major, Lanc. Fus.; H. Michaelides; J. Baker; P. F. Cox, B.A., B.L., Calcutta Univ.; L. D. Alexander, B.Sc. (Hons.), LL.B. (Hons.), Lond. Univ.

Obituary.

Sir Lumley Smith.

Sir LUMLEY SMITH, formerly judge of the City of London Court, died on Saturday at his house in Cadogan-square, in his eighty-fifth year. Sir Lumley Smith was a son of Mr. Richard Smith, of the City of London and of the Lodge, Littlehampton, and was younger brother of Mr. Horton-Smith, K.C., with whom he was educated at University

College, London. Both brothers afterwards went to Cambridge, Sir Lumley to Trinity Hall, where he was ninth Wrangler in 1857, and in the same year was elected to a fellowship at his college. Called to the bar by the Inner Temple in 1860, he obtained a considerable practice, and was known as a sound lawyer and reliable advocate.

Lumley Smith took silk in 1880, and in 1892 was appointed to be judge of the Shoreditch and Bow County Courts. From Shoreditch he was transferred to the Westminster County Court, and in 1901 Lord Halsbury made him a judge of the City of London Court in succession to Mr. Commissioner Kerr. The business of the court was heavy—the court fees amounted to about £20,000 a year—and it included a great deal of Admiralty work, in which the new judge soon proved himself to be quick and successful. In addition, like his colleague, Judge Rentoul, K.C., he was always on commission for the Central Criminal Court. After serving twelve years in this capacity he retired in December, 1913, just before his eightieth birthday, and in the New Year he received the honour of knighthood. Few judicial officers in London, says the *Times*, earned more gratitude from those who practised in the City courts. He was alert and at times abrupt in his love of dispatch, but he was always courteous, and he was painstaking where a case needed care and consideration. Sir Lumley Smith married in 1874 Jessie, second daughter of the late Sir Thomas Gabriel, the first and only baronet of that name. She died in 1879.

Judge Atherley-Jones, K.C., on taking his seat in the City of London Court on Monday, said that Sir Lumley Smith had succeeded a line of able judges in that court, which was one of the most ancient in the kingdom. Sir Lumley personified in the highest degree the most essential qualities of judgeship. He was courteous, patient, and industrious, and was a lawyer of almost unrivalled knowledge, and the care and perspicacity with which he discharged his duties secured for him the respect of the members of the legal profession who practised before him and of the public whose interests he guarded. By his affection, kindness of nature, and gentleness of disposition he won the friendship of all who knew him. The high character which he displayed on the Bench was maintained in his private life, and all would regard his name with respect and veneration. Mr. J. A. Slater, on behalf of the Bar, and Mr. Martin Holman and Mr. Griffiths, for the solicitors, associated themselves with these remarks.

Mr. Strachan, K.C.

The death is announced from Brighton of Mr. JOHN STRACHAN, K.C., at the age of eighty. Mr. Strachan was a journalist up to 1876, when he was called to the Bar by the Middle Temple. He practised in London and on the North-Eastern Circuit, and was a Bencher of his Inn. He was chairman and umpire of the Conciliation Board for the Northumberland Coal Trade until 1911, and he was District Probate Registrar of Lincoln since 1914.

Qui ante diem periit,
Sed miles, sed pro patria.

Second Lieutenant Cyril Hartree.

Second Lieutenant CYRIL HARTREE, R.G.A., who was killed in action on 29th May, aged thirty-eight, was the second son of Mr. and Mrs. William Hartree, of Havering, Tunbridge Wells. He entered Harrow School in 1893, and was a monitor in 1896. Leaf Scholar in 1897, and in the same year left the school. He was afterwards a scholar of Caius College, Cambridge, and in 1900 he took his B.A. degree (Classical Tripos) and was admitted a student at Lincoln's Inn, being then twenty-one years of age. He was a pupil of the late George Lawrence, Junior Equity Counsel to the Treasury, and was called to the Bar on 24th June, 1903, and obtained a considerable practice. In court, on the 6th inst., Mr. Justice Younger said he could hardly trust himself to speak of Mr. Hartree, with whom he was closely associated at the Bar, but he could not allow the occasion to pass without paying some tribute to his memory. He joined up immediately the clear call came. They would always remember him for his sterling character, sweet disposition, his unfailing charm, and ready and constant help. Lincoln's Inn to many of them would never be the same place again. He had given his life for them all, and had made the great sacrifice. It was for them to try and shew themselves worthy.

A correspondent writes to the *Times*:—"Soon after the outbreak of the war he felt the need for his aid, and was only prevented for a short time from responding to the call for reasons which were sufficient for himself, and that is saying, in his case, that they were the best reasons. He joined the Artists' Rifles, O.T.C., and a commission very soon followed. He was as efficient as a soldier as he had been as a member of the Chancery Bar, and was greatly esteemed by his brother officers and men. No man could be more missed at that Bar than Cyril Hartree is and will be."

Legal News.

Honours and Appointments.

The dignity of a peerage of the United Kingdom has been conferred upon the Right Hon. Sir WALTER GEORGE FRANK PHILLIMORE, Bt. Sir Walter retired from the position of Lord Justice of Appeal in 1916 after three years' service, but before that he had been sixteen years on the Bench, for the greater part of the time as a Judge in bankruptcy. On his promotion to the Court of Appeal his scholarly knowledge of the common law and his long experience as a puisne Judge made his assistance valuable, and he always exercised an independent judgment; he is also a recognized authority on ecclesiastical and international law, and is the author of "Three Centuries of Treaties of Peace and their Teaching," which was published last year. Notwithstanding his judicial work he found time to take part in the municipal business of Kensington, of which he was twice mayor, and to maintain his interest in Church matters. He succeeded in 1885 to the baronetcy which had been conferred on his father.

Mr. HENRY SUTTON LUDLOW (King & Ludlow), of 7, Broad-court Chambers, Bow-street, Covent Garden, has been appointed a Commissioner for affidavits of the Supreme Court of Western Australia. Mr. Ludlow was admitted in 1883.

Changes in Partnerships.

Dissolutions.

THOMAS FRANK CHARLTON and FRANK TANDY CHURCH, Solicitors (Durham & Charlton), Kingston-on-Thames, in the county of Surrey. May 27. The said Thomas Frank Charlton will continue to carry on the said business.

[*Gazette*, June 11.

The partnership formerly carried on by Messrs. CECIL DOWSON, HAROLD BURN HOPGOOD, and NOEL CECIL DOWSON was dissolved on 19th April last. Mr. Cecil Dowson and Mr. Noel Cecil Dowson are continuing to practise under the style of "Dowsons," at 18, Adam-street, Adelphi.

General.

Miss Helena Normanton has, says the *Manchester Guardian*, lodged an appeal with the Lord Chancellor and H.M. Judges, as visitors of the Inns of Court, against the refusal of the benchers of the Middle Temple to admit her as a student for "call" to the Bar. The appeal has been

deferred only in the hope that Lord Buckmaster's Bill opening the legal profession to women would have made better progress by this time.

In the House of Commons, on Monday, the Chancellor of the Exchequer, in reply to Mr. Whitehouse, said the question of the present position of women with respect to election to this House was under consideration. Mr. Whitehouse: Will the right hon. gentleman say when he expects to be in a position to make a statement? The Chancellor of the Exchequer: As soon as possible. It is mainly a question of law. That is being examined into.

In the course of the hearing of the Immingham case, at the Central Criminal Court, Sir Richard Muir, on the 4th inst., alluded to the functions exercise by the Public Prosecutor in this country. "If there is a case like this one," he said, "in which there is a likelihood that the party wronged will not prosecute, then the Public Prosecutor takes it up. If, as in this case, the party wronged does not prosecute, you must come to the conclusion that the party has some reason outside the case for not doing so, and it is for that reason that the Public Prosecutor intervenes."

At Tower Bridge Police Court, on the 6th inst., says the *Times*, before Mr. Hay Halkett, John Lavis, licensee of the Stingo Arms beerhouse, Tanner-street, Bermondsey, was summoned by the Bermondsey Food Control Committee for imposing a condition in regard to the sale of an article of food, to wit, a dinner. Mr. Hatton, for the defendant, submitted that a dinner could not be regarded as an article of food. It was a combination of articles of food, and therefore the Order did not apply. The regulation was not directed against dinners. Mr. Hay Halkett held that a dinner was not an article of food, and dismissed the summons. He added that probably within a week there would be a new Order to meet the case.

In the House of Commons, on Monday, Mr. Brace, in reply to a question by Mr. Joynson-Hicks as to whether an order for the internment of Arthur Zadig, a naturalized British subject, was made in October, 1915, under Regulation 14b; whether he carried the case to the House of Lords and was defeated; and why, when his internment was considered necessary, he had since been released, said:—The answer to the first two parts of the question is in the affirmative. As regards the rest of the question my right hon. friend decided that after two years' detention the case should be reconsidered, and he referred it to the Advisory Committee, who advised that Zadig might now be released without danger to the State. The internment order was accordingly revoked, with the concurrence of the competent military authority. Although at liberty, he remains subject to stringent restrictions.

The annual report of the National Society for the Prevention of Cruelty to Children records that during the past year the Society dealt with 38,422 cases of neglect and ill-treatment, involving 112,024 children, 17,065 fewer than the previous year, and 47,138 fewer than in 1913-14. While cases of neglect show a falling off—34,131 as against 38,663—cases of ill-treatment and assault were only nine below 1916-17. There were 800 cases of "corruption of morals," as compared with 706. Of cases dealt with by the Society due to drink, there is striking confirmation of the experience of the Central Control Board (Liquor Traffic) regarding the decrease of insobriety among women both in public and in the home. From August, 1914, to March 31, 1918, the Society protected 55,900 soldiers' children and provided homes for 5,173.

The Committee of Social Investigation and Reform consider that to deal effectively with the problem of venereal disease a change should be made in the present system which obliges magistrates, when remanding young girls charged with soliciting and similar offences, to send them to prison for the period of remand. The committee are anxious to open in London a sort of clearing house to which such girls could be sent by the magistrates. The proposal is to accommodate not more than twelve girls in one house, that it may not have the atmosphere of an institution. Here the girls would be tested as to their suitability for various employments, and would be kept until full inquiries had been made into their circumstances and into their physical and mental condition. Provision would be made for all those requiring medical care, and their supervision would be carried on after they had left the clearing house. At least £1,000 is needed to start the scheme, and a regular income of at least £600. Donations may be sent to the hon. secretary, 19, Tothill-street, Westminster, S.W. 1.

In the trial of Mr. Henry Murray, at the Central Criminal Court, for publishing defamatory libels concerning Sir William Marwood, Joint Permanent Secretary of the Board of Trade, in which the defendant, by the advice of his counsel, pleaded guilty, Mr. Justice Darling, says the *Times*, directed him to pay a fine to the State of £100, to pay the costs of the prosecution, and to enter into his own recognisances in £500 to be of good behaviour for two years; and, in the course of observations on the case, said:—"I see in the letters indications that he is suffering from that kind of—shall I say war mania?—which affects a considerable number of persons in this country. It is perfectly obvious that some people who in ordinary circumstances would be quiet and peaceable citizens, owing perhaps to the long-continued military operations and the strain which they put on everyone, have taken leave of their senses to some extent, and do things which they would not do in ordinary times. We find in the letters a suggestion that Sir Albert Stanley is a subsidized German agent, that he really desires Germany to win the war, that he is worse than a German spy who openly serves his country, and that he is worse than Roger Casement. I have come to the conclusion that the defendant, like other people I have had before me in this Court, is suffering from, I will not call it mania, but a crazy condition of mind which leads them to do all manner of things, some criminal and some merely foolish. Because of this I will not send him to prison. I must see above everything that this kind of conduct shall not be repeated."

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Neville.	Mr. Justice Eve.
Monday June 17	Mr. Leach	Mr. Goldschmidt	Mr. Borrer	Mr. Synge
Tuesday 18	Church	Leach	Goldschmidt	Bloxam
Wednesday .. 19	Farmer	Church	Leach	Borrer
Thursday 20	Jolly	Farmer	Church	Goldschmidt
Friday..... 21	Synge	Jolly	Farmer	Leach
Saturday 22	Bloxam	Synge	Jolly	Church

Date.	Mr. Justice Sargant.	Mr. Justice Astbury.	Mr. Justice Younger.	Mr. Justice Peterson.
Monday June 17	Mr. Bloxam	Mr. Jolly	Mr. Farmer	Mr. Church
Tuesday 18	Borrer	Synge	Jolly	Farmer
Wednesday .. 19	Goldschmidt	Bloxam	Synge	Jolly
Thursday 20	Leach	Borrer	Bloxam	Synge
Friday..... 21	Church	Goldschmidt	Borrer	Bloxam
Saturday 22	Farmer	Leach	Goldschmidt	Borrer

Further list of days and places appointed for holding the Summer Assizes, 1918:—

NORTH-EASTERN CIRCUIT.

Mr. Justice Bailhache.

Mr. Justice Shearman.

Monday, June 24, at Newcastle-on-Tyne.
Saturday, June 29, at Durham.
Saturday, July 6, at York.
Thursday, July 11, at Leeds.

MIDLAND CIRCUIT.

Saturday, July 6, at Warwick.
Thursday, July 11, at Birmingham.

NORTH AND SOUTH WALES AND CHESTER CIRCUIT.

Thursday, July 4, at Chester.
Monday, July 15, at Swansea.

Winding-up Notices.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—FRIDAY, June 7.

BUDD & TOM, LTD. (IN VOLUNTARY LIQUIDATION).—Creditors are required, on or before July 8, to send in their names and addresses, with particulars of their debts or claims, to Frederick Budd, 34, Archibald rd, Exeter, liquidator.

CREWE BUILDING MATERIALS & HARDWARE CO, LTD.—Creditors are required, on or before July 15, to send their names and addresses, and the particulars of their debts or claims, to Mr. William Kenyon, Laburnum House, 50, Samuel st, Crewe, liquidator.

LILITA NITRATE CO, LTD.—Creditors are required, on or before July 20, to send their names and addresses, and the particulars of their debts or claims, to William James Welch, 27, Leadenhall st, liquidator.

NORTH TEXAS LAND CO, LTD.—Creditors are required, on or before July 31, to send their names and addresses, and the particulars of their debts or claims, to Richard Heaton Smith, 30, St. Ann st, Manchester, liquidator.

JOINT STOCK COMPANIES.

LIMITED IN CHANCERY.

London Gazette.—TUESDAY, June 11.

ALPHA PRESS, LTD.—Creditors are required, on or before July 31, to send their names and addresses, and the particulars of their debts or claims, to Mr. Alfred Percival Hardwick, 840, Salisbury House, London Wall, liquidator.

NEW PATAGONIA MEAT & COLD STORAGE CO, LTD.—Creditors are required, on or before Aug 1, to send their names and addresses, and the particulars of their debts or claims, to James Duggan, 1, Bedford row, liquidator.

R.E.T. CONSTRUCTION CO, LTD.—Creditors are required, on or before July 25, to send their names and addresses, and the particulars of their debts or claims, to Alfred Page, 28, King st, Cheapside, liquidator.

Resolutions for Winding-up Voluntarily.

London Gazette.—FRIDAY, June 7.

Budd & Tom, Ltd.
Penylan Pavilion & Ground Co, Ltd.
British Law Fire Insurance Co, Ltd.
Ashton Smelt Arms Syndicate, Ltd.
Plymouth & Counties Trust, Ltd.
London Welsh Athletic Club, Ltd.
Crewe Building Materials & Hardware Co, Ltd.
Foxhall Road Garage Co, Ltd.

London Gazette.—TUESDAY, June 11.

Ashurst, Robinson & Co, Ltd.
Baltic Saw Mills Co, Ltd.
Marriages, Ltd.
Alpha Press, Ltd.
Mutual Loan Co (Leicester), Ltd.
Timber Transport Ltd.
Thistle-Etna Gold Mines, Ltd.
Portmadoc Touring Co, Ltd.
Vale Manufacturing Co, Ltd.
British Industrials, Ltd.
S. Segar, Ltd.